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United States  
Circuit Court of Appeals  
For the Ninth Circuit.

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ANDREW CLAUSS, VICTOR ENGINGER, W. A. GRUBB,  
JOSEPH HAMM, K. HALTER, L. SCHOTT, L. LAIT,  
E. W. CLARK, JEAN A. GOURSELLE, M. C. BROOKE,  
H. L. BROOKE, JESSE W. OLNEY, LILLY M.  
STEWART, THEODORE B. WILCOX, F. L. SHULL  
and ALVIN J. WHITMAN,

Appellants,

vs.

PALMER UNION OIL COMPANY, a Corporation, FRANK  
L. BROWN, LEWIS A. HILBORN, GEORGE L.  
WALKER, CHARLES E. LADD, GAVIN McNAB, H.  
C. STRATTON, and GEORGE I. STEWART, as  
Directors of said PALMER UNION OIL COMPANY  
and in Their Individual Capacities, FRANK L. BROWN,  
J. C. KEMP VAN EE, LEWIS A. HILBORN, H. C.  
STRATTON and CHARLES E. LADD, as Directors of  
PALMER OIL COMPANY, a Corporation, and in Their  
Respective and Individual Capacities, ANGLO-CALI-  
FORNIA TRUST COMPANY, a Corporation, and  
PALMER OIL COMPANY, a Corporation,

Appellees.

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**Transcript of Record.**

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Upon Appeal from the United States District Court for  
the Northern District of California, Second Division.

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**Filed**

JUL - 1 1914

**F. D. Monckton,**



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Circuit Court of Appeals  
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INDEX TO THE PRINTED TRANSCRIPT OF  
RECORD.

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur. Title heads inserted by the Clerk are enclosed within brackets.]

|  | Page |
|--|------|
| Affidavit of Gavin McNab.....  | 67   |
| Amended Bill of Complaint in Equity.....   | 1    |
| Assignment of Errors.....  | 85   |
| Attorneys, Names and Addresses of.....   | 1    |
| Bill of Complaint in Equity, Amended.....  | 1    |
| Bond on Appeal .....   | 90   |
| Certificate of Clerk U. S. District Court to Trans-<br>cript of Record on Appeal.....  | 98   |
| Citation on Appeal (Original).....   | 100  |
| Decree Dismissing Amended Bill of Complaint..  | 72   |
| Docket, United States District Court.....  | 93   |
| Marshal's Return on Subpoena ad Respond-<br>endum .....  | 41   |
| Motion of Anglo-California Trust Company to<br>Dismiss Amended Bill of Complaint.....  | 51   |
| Motion of Frank L. Brown, Lewis A. Hilborn,<br>George L. Walker, Charles E. Ladd and<br>H. C. Stratton to Dismiss Amended Bill of<br>Complaint ..... | 52   |
| Motion of J. C. Kemp Van Ee to Dismiss<br>Amended Bill of Complaint.....   | 57   |
| Motion of Palmer Union Oil Company to Dis-<br>miss Amended Bill of Complaint.....  | 43   |



| Index.   | Page |
|--|------|
| Motion of George I. Stewart and Gavin McNab<br>to Dismiss Amended Bill of Complaint....                                    | 47   |
| Motion to Amend Order of March 2, 1914; to Va-<br>cate Decree of March 4, 1914, and to Amend<br>Amended Complaint .....    | 73   |
| Names and Addresses of Attorneys.....  | 1    |
| Notice of Motion of Defendants Frank L. Brown<br>et al. for an Order Vacating Decree <i>Pro</i><br><i>Confesso</i> .....   | 64   |
| Notice of Motion of Defendant Palmer Union<br>Oil Co. for an Order Vacating Decree <i>Pro</i><br><i>Confesso</i> .....     | 60   |
| Opinion and Order Denying a Motion for Leave<br>to File an Amended Bill of Complaint....                                   | 79   |
| Opinion on Motion to Dismiss Amended Bill of<br>Complaint .....  | 69   |
| Order Allowing Appeal .....  | 88   |
| Order Denying Motion to Amend Order of<br>March 2, 1914, etc.....  | 81   |
| Order Dismissing Suit.....   | 71   |
| Order Enlarging Time to June 8, 1914, to File<br>Record on Appeal, etc.....  | 103  |
| Order Granting Motions to Vacate Order Taking<br>Amended Bill <i>Pro Confesso</i> ; and Vacating<br>Former Order, etc..... | 68   |
| Order <i>Pro Confesso</i> .....  | 58   |
| Petition for Allowance of Appeal.....  | 83   |
| Praecipe for Transcript.....   | 97   |
| Return on Service of Writ.....   | 41   |
| Subpoena Ad Respondendum.....  | 40   |

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Attorneys for Appellees.

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*In the District Court of the United States in and for  
the Northern District of California, Second Division.*

No. 45—EQ.

ANDREW CLAUSS,

Plaintiff,

vs.

PALMER UNION OIL COMPANY, a Corporation  
et al.,

Defendants.

**Amended Bill of Complaint in Equity.**

To the Honorable the Judges of the District Court  
of the United States in and for the Northern  
District of California, Second Division, in Chancery  
Sitting:

Your orator, Andrew Clauss, is a resident and citizen of the State of Ohio, and on the 1st day of October, 1911, was the owner and holder of one thousand shares of the capital stock of the defendant Palmer Oil Company, and at all times since said date has been and now is the owner and holder of said one thousand shares of said stock, by leave of Court first had and obtained, brings this his Amended Bill of Complaint on behalf of himself and all other persons similarly situated and for the use and benefit of said Palmer Oil Company against Palmer Union Oil Company, a corporation organized and existing under and by virtue of the laws of the State of California, and a citizen of said State of California, having its principal place of business at Sisquoc, Santa Barbara County, California, Palmer Oil Company, a corporation organized and existing under and by virtue of the laws of the State of California, and a citizen of said State of [1\*] California, having its principal place of business at Sisquoc, Santa Barbara County, California, Anglo-California Trust Company, a corporation organized and existing under the laws of the State of California, and a citizen thereof, having its principal office and place of business in the city of San Francisco, in the State of California, and resident in the Northern District thereof, Frank L. Brown, Lewis A. Hilborn, George L. Walker, Charles E. Ladd, Gavin McNab, H. C. Stratton and George I. Stewart, directors of said Palmer Union Oil Company, hereinafter called "Union Company," all whereof are citizens of said

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\*Page number appearing at foot of page of original certified Record.



State of California residing within the Northern District of California, save and except said Ladd, who is a citizen and resident of the State of Oregon, and also the said several parties in their individual capacities, also Frank L. Brown, J. C. Kemp Van Ee, Lewis A. Hilborn, H. C. Stratton and Charles E. Ladd, as directors of said Palmer Oil Company, hereinafter called "Palmer Company," or trustees thereof if said corporation be defunct, also against the several parties in their individual capacities.

Your orator further shows that the questions involved, and the relief demanded in this suit, are of common and general interest to many persons, to wit, to all the stockholders of said Palmer Company, constituting a class so numerous as to make it impracticable to bring them all before the Court in this suit.

### I.

That heretofore, to wit, on or about the 21st day of October, 1911, said Palmer Company was a corporation organized and existing as aforesaid, then having its principal place of business in the City and County of San Francisco, State of California aforesaid, and was capitalized at two million shares of capital stock, of the par value of one dollar each, all whereof were issued and outstanding, of which shares plaintiff [2] herein was the owner of one thousand. That on said date said Palmer Company was the owner in fee of 720 acres of land, and of a lease of 160 acres of land, said lease enduring for twenty years from the date thereof, which was about the 23d day of March, 1905, with privilege of re-

newal, at a ten per cent royalty upon all oil taken therefrom, being 880 acres of land in all, said lands situate and lying in the Santa Maria Oil fields district, in Santa Barbara County, California, near the town of Sisquoc, in said county, and all of said lands were proven to the production of oil. That at said time the said Palmer Company had upon said lands eight wells of great depth, of which five were producing oil in the aggregate of 1,800 barrels per day, and two of said wells were flowing wells whose nominal production was 700 barrels each per day. That said property was further improved with four 55,000 barrel steel tanks, five 10,000 barrel steel storage tanks and earth reservoirs to be used in emergencies, the total oil storage upon said property being approximately 1,000,000 barrels, all of which were connected by a system of pipe-lines for facilitating discharges and delivery of oil into and from said storage. That the said property was further equipped with a battery of five 70 horse-power boilers in a central plant, from which plant steam was distributed to various parts of the property for power purposes, and an electric light plant furnished electricity for light purposes, and water was furnished from two wells drilled upon the land providing abundance of water for steam and all other purposes, bank and boardng houses, and barn and other buildings, furnishing ample accommodation for all men and beasts employed upon said property. That said Palmer Company had on hand in said storage 509,500 barrels of oil, valued at 40 cents per barrel, aggregating 203,800 dollars, and possessed

accounts receivable amounting to 111,694.65 [3] dollars, and cash in hand 31,623 dollars, aggregating 347,118.44 dollars of current assets, and a surplus balance over its current liabilities of 228,254.58 dollars, after having during said year 1911 spent in improving its property the sum of 208,394.35 dollars. Said Palmer Company had earned during the fiscal year of 1911 a profit of 308,470.40 dollars, and therefrom had paid dividends to its stockholders of 219,-879.24 dollars. That during the year prior, of 1910, said company had earned a profit of over 355,272.10 dollars from which it had paid dividends of 188,-220.99 dollars. That on said date, October 21st, 1911, said Company had contracts with responsible concerns for delivery of large quantities of oil at 50 and 55 cents per barrel and was on August 31st, 1911, behind in its deliveries with said concerns to the extent of 2,227,733 barrels of oil. Up to said 21st day of October, 1911, dividends upon the outstanding stock of said Palmer Company had been regularly declared, and paid monthly, from the profits thereof, for two years, at a rate of one cent per share per month, and said company at such time was in condition to continue paying such dividends, indefinitely. That the assets of said Palmer Company were on said 21st day of October reasonably worth and of the value of two million five hundred thousand dollars (\$2,500,000), and the stock of said Palmer Company was then bid for on the public markets at one dollar, or thereabouts, per share and was reasonably worth that amount.



## II.

Your orator, upon information and belief, further alleges that on said October 21st, 1911, and prior thereto, all of the defendants in this action except said Palmer Company, and except said Anglo-California Trust Company, conspired and confederated together for the purpose and with the design of securing to themselves, and to divers other persons to your orator unknown, and [4] for their own benefit all of the said property of said Palmer Company and their minority holdings of the stock of said Palmer Company, without giving or paying anything of substantial value therefor, and thereby to deprive and defraud the said Palmer Company, and the minority stockholders thereof, of all interest in said property. And your orator shows that in pursuance of said conspiracy and as one of the means and instruments of carrying out and accomplishing the same and their said designs aforesaid, that prior to said 21st day of October, 1911, the aforesaid directors of said Union Company had organized and incorporated said Union Company, with an authorized capital stock of six million dollars, divided into six million shares of the par value of one dollar per share, none of which had been subscribed or paid in excess of a nominal sum sufficient for organization purposes. That prior to said date said defendants Brown and Walker, and as your orator is informed and believes other of said Union Company directors whose names are to your orator unknown and other persons, stockholders of said Union Company, acting in concert with said Brown and Walker, had ac-

quired possession of one hundred and sixty acres of land in Ventura County, California, lying four miles north of the town of Santa Paula in said county, but whether the same was acquired under lease or in fee your orator has no information, also had acquired a lease upon 40 acres of land in Kern County, California, lying in Section 23, Range 23 East, M. D. B. & M., the region of said last-mentioned land being known as the Midway Oil Field. That said Santa Paula property contained four old shallow oil wells, all of which were unprofitable to pump, and two wells incompletely drilled, one completed well and one well partially bored. That said completed well, your orator is informed and believes and alleges, produced [5] oil but in quantities not to exceed one hundred and fifty (150) barrels per day, but no other of said wells upon either of said tracts was on said date producing, or being bored, and your orator is informed and believes and alleges that no well or wells upon either of said tracts has since been operated. That said lands were by said defendants transferred unto Paula Oil Company, a corporation organized and existing under the laws of the State of California, whereof said Brown was president and said Walker was secretary in exchange for capital stock of said corporation; that said Paula Company never, at any time, had any property or assets of more than slight or nominal value except the aforesaid land, and thereafter and prior to said 21st day of October, 1911, said defendants being then and there the owners and holders or in control of two-thirds of the issued and outstanding capital stock of



said Paula Oil Company, caused said lands, and all other assets of said Paula Oil Company, to be transferred by said Paula Oil Company to said Union Company and to be received by said Union Company, the consideration paid therefor by said Union Company to said defendants being capital stock of said Union Company, the same being paid through said Union Company passing said stock to said Paula Oil Company and the amount whereof your orator is informed and believes, was one million two hundred thousand shares of said Union Company stock. That said two tracts of lands, and all assets of said Paula Oil Company, were, as your orator believes and alleges, on or about said 21st day of October, of a value not to exceed forty thousand (40,000) dollars.

### III.

Your orator further alleges that, in pursuance of said conspiracy, and as another of the means and instruments of carrying out and accomplishing the same, and their said designs [6] aforesaid, prior to said 21st day of October, 1911, said defendants Brown, Hilborn, Kemp Van Ee, Stratton and Ladd acquired the fee of 880 acres of land in said Santa Maria field, a part of which enjoined on the north the 160 acre or Blockman lease tract of said Palmer Company. That said lands were by said defendants transferred to Palmer Junior Oil Company, a corporation organized and existing under the laws of California, whereof said Brown was president, said Hilborn was vice-president, said Kemp Van Ee was second vice-president, said Stratton was secretary

and said Ladd was director. That the consideration paid said defendants by said Palmer Junior Oil Company for said transfer was capital stock of said company, the amount being, as your orator is informed and believes, fifty-one per cent thereof, the balance remaining in the treasury of said company. That said land was on said 21st day of October, 1911, and has thereafter at all times been unproved to oil; that two wells were sunken upon said lands by said Palmer Junior Oil Company and no oil was found thereupon, which said lands were all the property or assets owned by said Palmer Junior Oil Company, at any time. That prior to said 21st day of October said Palmer Junior Oil Company, at the instance and direction of said Brown, Hilborn, Kemp Van Ee, Stratton and Ladd, together with all assets of said Palmer Junior Oil Company, was sold to said Union Company, and was by said defendants acting as directors or stockholders of said Union Company, purchased by said Union Company, the consideration therefor being capital stock of said Union Company; and your orator is informed and believes and alleges that one million shares of the capital stock of said Union Company was so paid for said land and assets which said land and assets were not at such time worth to exceed one hundred thousand dollars.

[7]

#### IV.

Your orator further alleges that, in pursuance of said conspiracy, and as another of the means and instruments of carrying out and accomplishing the same, and their said designs aforesaid, prior to said

21st day of October, 1911, said Brown and others of said directors of said Union Company, and of said Palmer Company, whose names are to your orator unknown, acquired an option to purchase for the sum of two hundred thousand dollars, as your orator is informed and believes, all that tract of land lying in said Santa Maria oil field, being Section 13 and a part of Section 12, in said field, comprising in all 1180 acres of land or thereabouts. That thereafter said parties incorporated Palmer Senior Oil Company, a corporation under the laws of the State of California, and thereafter in consideration of capital stock issued to them by said corporation said defendants transferred said option to said Palmer Senior Oil Company, which said option was all the property or assets owned by said Palmer Senior Oil Company. Thereafter and prior to said 21st day of October, 1911, said Palmer Senior Oil Company, at the instance and direction of said defendants, directors of said Union Company, transferred all the assets of said corporation including said option to said Union Company, and said defendants, in their capacity of directors of said Union Company, caused said Union Company to purchase the same; that in addition to this option said Palmer Senior Company had no property or assets of any value, at any time, of more than slight or nominal value. That the consideration paid said Palmer Senior Oil Company by said Union Company for said option and assets was capital stock of said Union Company, and your orator is informed and believes that one million seven hundred and fifty thousand shares of said Union



Company stock was so paid for said option, that neither said Palmer Senior nor said Union [8] have ever paid anything on account of said option, as your orator is informed and believes, and so charges the fact to be, but said Union Company has mortgaged all of its lands, and attempted to mortgage the lands aforesaid belonging to said Palmer Company, attempted to be acquired by said Union Company from said Palmer Company, as hereinafter set forth, to secure the payment of the same. That said lands and all thereof were and ever since have been so called "wild-cat" lands, were and are unproven to contain oil, and possessed and do now possess no other value than grazing lands. That the price agreed to be paid for said lands in said option largely exceeded the value of said land, and the said option was of no value whatever and was utterly worthless.

#### V.

Your orator further alleges that, in pursuance of said conspiracy, and as another of the means and instruments of carrying out and accomplishing the same, and their said designs aforesaid, that on said 21st day of October, 1911, said Union Company possessed no assets, or more than slight or nominal value, except the above matters and things, so acquired from said Paula Company, said Palmer Junior Company and said Palmer Senior Company above described, all of which did not exceed the sum or value of \$140,000, and that it had issued and there was outstanding 3,950,000 shares of the said Union Company stock so paid or given therefor, and the shares of the stock

of said Union Company were not worth more than about two and one-half cents per share, while, on said date, the shares of the stock of said Palmer Company, being regularly listed on the San Francisco Stock and Bond Exchange, were quoted thereon at 87½ cents a share, and twenty days before said date and before the designs of said defendants, the directors of said Union Company and said Palmer Company had become generally known to the public, were quoted on said exchange at 105 bid, 110 asked, [9] and shortly before September 1st, 1911, had sold on said exchange at prices ranging from \$1.50 to \$1.85 per share. And further your orator alleges, upon information and belief, that there were issued, from time to time, to the aforesaid directors respectively of said Union Company, and to others for their use and benefit, large numbers of shares of the stock of said Union Company for alleged services as officers of said Union Company, and for the so-called promoting of said Union Company, the exact number of which is unknown to your orator, but upon information and belief your orator alleges, exceeding one million shares, which said services and said promoting, your orator alleges were and are of no value whatever, and that the said shares so issued were issued and delivered to said directors of said Union Company without any valuable or lawful consideration therefor whatever. Your orator further shows that after having acquired to said Union Company all and several the said tracts and parcels of lands, the said Brown, Hilborn, Kemp Van Ee, Stratton and Ladd, directors of said Palmer Com-



pany and constituting a majority of said board of directors, being also at said time, except said Kemp Van Ee, directors of said Union Company and comprising a majority of the board of directors of said last-named company, and being at such time including said Kemp Van Ee also owners or holders of large number of shares of the issued and outstanding capital stock of said Union Company, to wit, two-thirds of all thereof, and also of a quantity of capital stock of said Palmer Company, the quantity of which is to your orator unknown, wrongfully and unlawfully concerted and conspired to defraud the holders of the capital stock of said Palmer Company other than themselves and those stockholders of said Palmer Company who at such time had greater interests in the stock of said Union Company than they possessed in said Palmer Company, out of their property and interest in said Palmer Company, [10] and so conspiring caused various false statements to be made to the minority stockholders of said Palmer Company whereby it was represented to said minority stockholders that great necessity existed for said Palmer Company to provide sea transportation for its oil and to provide capital for additional drilling of wells and further development of its property. That rather than stop the payment of dividends upon said Palmer Company stock the officers and directors of said Palmer Company had thought it advisable to accept from said Union Company an offer made by said Union Company to said Palmer Company, of merger of the properties of said Palmer Company with the properties of said

Union Company, and that the larger stockholders of said Palmer Company, aggregating about two-thirds of the issued capital of said company, to whom the matter of said merger had theretofore been submitted, had given their hearty approval of said merger and had signed an agreement therefor similar to a form of agreement thereupon offered by said directors to said minority stockholders, accepting the terms of said proposed merger; that it was further represented as aforesaid that said Union Company controlled 1830 acres of rich proven oil lands immediately adjacent to said Palmer Company properties, as well as producing properties in Ventura and Midway districts; that the basis of such proposed merger was for said Union Company to give to the stockholders of said Palmer Company two million dollars of its six per cent twenty year gold bonds of an issue of three million dollars of bonds of said Union Company and two million dollars of the capital stock of said Union Company in payment for all the assets of said Palmer Company. That the said transaction would insure the stockholders of said Palmer Company six per cent annual income on their bonds and a first lien on all the properties of both companies, thereby absolutely protecting said Palmer Company stockholders in their investments in [11] said property; and that by giving to said Palmer Company stockholders a like amount of stock of said Union Company as they held in said Palmer Company, their holdings would become practically doubled in a company that would have ample securities in its treasury for the further de-

velopment of the combined properties and for the necessary transportation and manufacturing facilities incident to the utilization of the products of the oil industry and the marketing of the same. That all and several the said statements and representations, your orator is informed and believes and so alleges, were false, and were then and there known to be false by said directors of both of said companies. Your orator alleges it to be a fact, and that each and all of the directors of both said Union Company and said Palmer Company then and there knew it to be a fact, that said Palmer Company had no need whatever for further or additional undeveloped oil lands; and that it possessed a tract of 880 acres of land as aforesaid, on which there were but eight wells, and there was ample surface upon said lands whereupon to sink all the wells which it would ever have been practicable for said company to drill; and that no necessity whatever existed for said Palmer Company providing sea transportation for its oil, or if such necessity existed, said company had ample means at hand for providing such transportation from its own resources; and that there was no necessity for providing additional capital from sources outside the profits of said company, for drilling additional wells and further developing the property of said company, and that there was no necessity for drilling such wells or for the further development of its property, and that such desirability as existed for additional wells, or extended facilities should have been met by the residue of profits yielded by said wells after said dividends had



been paid, the yield of its said wells being ample to provide said company [12] with all needful funds for all such further development as would be desirable, commensurate with the proper and business-like management of said property, and at the same time to continue paying the usual dividends of one cent per share per month upon its outstanding stock. That it was false that the merger of said properties as aforesaid was to be preferred rather than stop paying dividends upon said Palmer Stock, but that there was no necessity of stopping dividends upon the stock of said Palmer Company, but upon the said merger being effected as hereinafter stated, all dividends or income to the stockholders of said Palmer Company actually did stop, and such stockholders have never since received any dividends, interest, or income from said property whatsoever. That it was false that at such time, the said 21st day of October, 1911, about two-thirds of the stockholders of said Palmer Company had consented to said merger, but that a much less number had so consented, and those persons consenting were persons who owned larger interests in said Union Company than they did in said Palmer Company, or were persons who had been wrongfully induced to give their signatures to such proposed merger by the foregoing false representations made to them by the defendants herein, and others whose names to your orator are unknown acting and confederating with said defendants and owning larger holdings of stock in said Union Company than they possessed in said Palmer Company. That said Union Company did not at

said time, or at any time, control 1130 acres of "rich proven oil lands" immediately adjacent to the Palmer Company's properties, but controlled an area adjacent to said properties of less than 1130 acres, and said owned or controlled lands were not rich nor proven to contain oil; that the statement that said Union Company controlled producing oil properties in the Ventura district was false and misleading. That [13] your orator is informed and believes and alleges that the production of said Ventura wells did not pay the cost of pumping, and said property was entirely worthless for oil production. Your orator alleges that the said transaction would not insure the stockholders of said Palmer Company six per cent annual income on their bonds, as represented by said schemers, viz.: said directors of said Union Company and of said Palmer Company, that after having procured from said stockholders, by said false representations, their consents to said transfer of assets of said Palmer Company, said schemers proposed to continue in the control of the boards of directors of both said Palmer and said Union Companies, and intended that through such control they would thereafter withhold said bonds from said Palmer Company stockholders, and never let such bonds pass out of their own possession, and thereafter to deliver up said bonds to said Union Company and cancel the same as hereinafter set forth, and refuse to deliver said Union Company stock to said stockholders, thus defrauding and depriving said stockholders of said Palmer Company of all property in said Union Company whatsoever.



## VI.

And your orator further alleges that said directors of said Palmer Company and of said Union Company, by said false and fraudulent representations, pretended to have secured the consent of the holders of two-thirds of the capital stock of the said Palmer Company to the sale of all the assets of said Palmer Company to said Union Company, and said transfer thereof, on the terms aforesaid, was actually made, by said Palmer Company to said Union Company, and said Union Company, on or about said October 21st, 1911, received and entered into possession of the same, and has continued in possession thereof to this date, claiming to be the lawful owner thereof. [14]

## VII.

That such transfer was an outrage and imposition upon the interest of the minority stockholders of said Palmer Company, and was in fraud of such stockholders and their said interests. That all and several the properties of said Union Company were of no use or value to the properties or to the operation of said Palmer Company, and could not have been profitably or conveniently handled in connection with the handling of said Palmer Company properties. That said Ventura properties, even if they had not been worthless for purposes of production as aforesaid, lay at a great distance from the properties of said Palmer Company, and could not have been operated in any manner in relation to the operation of the wells, storage or distribution of said Palmer Company properties. That said Midway

properties were also at great distance from said Palmer Company properties and in an opposite direction to said Ventura properties, and could not have been operated in connection with or relation to the operation of the well, storage or distribution of said Palmer Company properties. That said Palmer Senior lands were wholly worthless and useless to said Palmer Company properties, in that they were lands not known to contain oil and which probably do not contain oil, and which if they did contain oil would be inconvenient and difficult to operate in connection with the operation of said Palmer Company's properties, and were wholly useless and worthless as an adjunct thereto. That the lands of said Palmer Junior Oil Company were, except a narrow strip of the westerly edge thereof, which might possibly contain oil, all wholly worthless and useless to said Palmer Company properties, as the same does not, so far as is known, contain oil, and are suited only for grazing purposes. That the said Union Company, at the time of said transfer of said Palmer properties, was unproductive of income from any source save from the sale of its capital stock, which capital stock at such [15] time had become unsalable for lack of market. That at the time of said transfer five wells in all had been started, on the various properties of said Union Company, and had been more or less bored, aside from said four shallow wells on said Ventura properties, and none of these save one were productive, and said producing well yielded not to exceed one hundred barrels of oil per day, and said Union Company had nearly ceased operations. That said transfer of said

Palmer Company was of great benefit to the stockholders of said Union Company but was destructive of the interests of the stockholders of said Palmer Company as hereinafter set forth.

### VIII.

That thereafter said two millions of dollars of bonds and said two millions of dollars of stock of said Union Company were transferred by said directors of said Union Company to themselves as directors of said Palmer Company, and the said stocks and bonds were so held until on or about the 14th day of December, 1912. On said last mentioned date said Union Company directors caused to be assembled a meeting of the stockholders of said Union Company, at which meeting the capitalization of said Union Company was increased from six million (6,000,000) dollars, to ten million (10,000,000) dollars, said directors of said Palmer Company in behalf of said Palmer Company, voting thereat in favor of said increase two million shares of the capital stock of said Union Company pretended to be held by said Palmer Company, which vote of said Palmer Company was necessary to carry the proposal. Thereafter on the 17th day of December, 1912, said Union Company directors caused to be assembled another meeting of stockholders of said Union Company at which there was voted amended articles of incorporation, which said amended articles changed the character of the capital stock of said Union Company by making four million [16] dollars (4,000,000) thereof preferred shares, and the remaining six million dollars common shares, and



there voted at this meeting the following pretended stockholders with the pretended number of shares set opposite their respective names, the issued and outstanding capital stock of said Union Company at such time aggregating five million nine hundred thirty-seven thousand eight hundred fifty-four (5,937,854) shares, the voting of said pretended 2,000,000 shares of said Palmer Company being necessary to carry said proposition, and the voting of the same was without authority and unlawful:

|  |         |         |
|--|---------|---------|
| Frank I. Guilford.....                               | 625     | Shares. |
| E. M. Price.....                                     | 937     | “       |
| Brown, Walker Simmons Company,<br>a corporation..... | 654671  | “       |
| Lewis A. Hilborn.....                                | 106251  | “       |
| Frank L. Brown.....                                  | 21120   | “       |
| J. C. Kemp Van Ee.....                               | 678825  | “       |
| Palmer Oil Company, a corporation                    | 2000000 | “       |
| Palmer Junior Oil Company, a cor-<br>poration.....   | 550015  | “       |
| H. C. Stratton.....                                  | 50000   | “       |

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Total voted..... 4062444 Shares.

That subsequent to the said 21st day of October, 1911, the principal place of business of said Union Company was removed from San Francisco to Palmer Camp near Sisquoc, Santa Barbara County, and all books of account, and documents of said Palmer Company and said Union Company, save the stock books of said Union Company, were removed from San Francisco to said Palmer Camp, which said removal was made, your orator is in-

formed and alleges, for the purpose of preventing access to said books by stockholders of said Palmer Company who had accepted or were being asked to accept stock in said Union Company as herein set forth, and of rendering inconvenient and difficult the attendance by stockholders of said Palmer Company at meetings of said Union Company. That said amended articles of incorporation were thereupon filed in the offices of [17] the Clerk of the City and County of San Francisco and of the Secretary of the State of California and thereafter said defendants acting as directors of said Palmer Company offered unto said Union Company the said bonds in exchange, dollar for dollar, of said preferred stock of said Union Company, and said defendants as a majority of directors of said Union Company accepted said offer, and said bonds were thereupon by said Union Company attempted to be canceled. That said bonded indebtedness of said Union Company was wrongfully and fraudulently reduced; that said Union Company had no right to receive said bonds or to cancel the same while at the same time asserting that the transfer of said assets of said Palmer Company to said Union Company was *bona fide* and for a fair consideration; if said sale was notwithstanding valid, as claimed by said Union Company said bonds belonged to said Palmer Company, and cancellation of the same by said Union Company was a conversion and a fraud upon said Palmer Company. That said delivery of said bonds of said Union Company, under an agreement to exchange the same for preferred stock of said Union



Company, was a further fraud upon said Palmer Company, and a part and process of the scheme of said conspirators to contrive, by successive steps, to deprive said minority stockholders of all interest of any value whatever in said Palmer Company properties.

That said preferred stock was not transferred by said Union Company to said Palmer Company, but was retained by said Union Company which refused to deliver the same to said Palmer Company, and never has delivered to said Palmer Company any of said preferred or common stock. Said Union Company thereafter fraudulently caused requests to issue to the minority stockholders of said Palmer Company to deliver to said Union Company their respective shares of stock in said Palmer Company whereupon, in exchange for [18] each share of stock of said Palmer Company as delivered, said Union Company would deliver one share of preferred and one share of common stock of said Union Company. That said exchange of stock purported to be the delivery to the stockholders of said Palmer Company of the preferred and common stock of said Union Company which said Union Company directors asserted said Palmer Company stockholders were entitled to receive in consideration of said bonds and said assets belonging to said Palmer Company, but said Union Company refused to deliver the same to said Palmer Company, or to deliver the same to the stockholders of said Palmer Company, unless they would first deliver to said Union Company their stock in said Palmer Company.

## IX.

That said Union Company falsely represented unto said Palmer Company stockholders that said Union Company had a right to receive said Palmer Company stock in exchange for such preferred and common stock, and that the Palmer Company stockholders had by said proceedings agreed to and were in law obliged to surrender to said Union Company their shares in said Palmer Company and receive in exchange therefor the stock of said Union Company, and many Palmer Company stockholders, believing that said false representations were true, and not knowing or understanding the manner by which said transfer of said bonds for said preferred stock had been made, as herein set forth, but believing the representations made to them by said Union Company, and not knowing the facts herein set forth concerning the transfer of the assets and property of said Palmer Company to said Union Company, but believing said representations that said transfer was legal and proper, and that it had been made in good faith and for the benefit of all of the stockholders including the minority stockholders of said Palmer Company, many of said Palmer stockholders [19] being actuated by such consideration and by none other, with otherwise no intention of delivering up their said Palmer stock in exchange for said Union Company stock, did exchange their respective shares of said Palmer Company stock for said preferred and common shares. That said directors of Union Company by this means procured large quantities of said Palmer Company stock, sufficient in amount

when added to their own Palmer Company stock, to constitute two-thirds of said issued Palmer Company stock. Whereupon said directors of said Union Company and said directors of said Palmer Company, on March 22d, 1913, surreptitiously caused a meeting of the directors of said Palmer Company to be held, of which meeting the minority stockholders of said Palmer Company had no knowledge, and of which your orator had no knowledge, at which meeting there were present of the directors of said Palmer Company said Brown, Hilborn and Kemp Van Ee, whereupon a resolution was offered and unanimously passed by said three directors amending the Articles of Incorporation of said Palmer Company, which Amended Articles were filed with the County Clerk of the County of Los Angeles, and with the Secretary of State of California, wherein and whereby the period of existence of said Palmer Company was reduced from fifty (50) years, the period contained in the original Articles of Incorporation, to six (6) years, six (6) months and four (4) days, whereby it was sought to have said Palmer Company expire by limitation within six (6) days after the passage of said resolution, and within two (2) days after the date of the filing of said amended articles with said Secretary of State; that the only alleged stockholder of said Palmer Company consenting to the said amendment of said articles of incorporation was the said Union Company and that in such assent signed by said Union Company the said Union Company represented itself to be the owner and [20] holder of and consenting for 1,341,106 shares of the stock



of said Palmer Company, whereas said stock so pretended to assent thereto was not in fact, nor in law and equity, owned by the said Union Company, nor did the said Union Company have proxies from the owners thereof authorizing it to vote the same or to make said assent, but said shares of stock so assenting by said Union Company were, for the most part, fraudulently procured from the stockholders of said Palmer Company in the manner aforesaid.

### X.

That thereafter said Union Company prepared a book in which it entered the names of all and several the minority stockholders of said Palmer Company, together with the number of Palmer Company shares respectively held by them, and placed opposite such names and shares such numbers of shares of said preferred and common stock as said Union Company desired said Palmer Company stockholders should receive in exchange for their said Palmer Company stock, and having so done, said Palmer Company directors in January, 1913, said Palmer Company being then a living and going corporation, and no hint or suggestion being made that said directors intended or contemplated putting it out of existence, notified all and several the stockholders of said Palmer Company to deliver unto one Moody, Secretary of said Palmer Company, their respective shares of said Palmer Company stock and receive therefor such shares of said preferred and common stock as had been set aside for them respectively as aforesaid, said deliveries of said Palmer Company stock to said Moody being in fact for the benefit of said

Union Company, to whom said Moody, your orator upon information and belief alleges, delivered the shares of Palmer Company stock so obtained.

# XI.

That large numbers of said Palmer Company stockholders [21] failed and refused to so deliver up their said Palmer Company stock to said Moody, as aforesaid, whereupon said Union Company, for the purpose of forcing said deliveries of stock to said Moody, on or about August 26th, 1913, caused to be levied upon all of said Union Company stock an assessment of one cent per share, payable immediately said levy was made, and which became delinquent on the 25th day of September, 1913, in default of which payment, said stock was to be sold on the 14th day of October, 1913, and thereupon, on August 19th, 1913, said Union Company notified said minority Palmer stockholders that if they did not deliver their respective shares of Palmer stock to said Union Company, and receive said Union preferred and common stock respectively allotted to them, and pay said assessment levied upon said preferred and common stock, that said stock would on said 14th day of October, 1913, be sold, whereby such sale it was intended the holders of said Palmer Company stock would be divested of all property whatsoever in the assets of said Palmer Company. That there existed no reason whatever for the levying of said assessment upon said Union Company stock by said Union Company directors, save and except for the purpose of pretending to call to said Union Company said preferred and common shares out of the hands of said

Palmer Company stockholders, thereby pretending to divest said Palmer stockholders of their property as aforesaid, but the same was done for the purpose of frightening and so inducing the minority stockholders of said Palmer Company to make said exchange of securities, and your orator prays discovery as to what shares so purporting to belong to stockholders of the Palmer Company who had not assented to such exchange, were sold at said sale and the names of the respective purchasers thereof. [22]

## XII.

That the only productive wells now operated by said Union Company, save and except said Wells in said Midway district, are five wells located upon said Palmer Company property; that the said wells, your orator is informed and believes and alleges now yield, and for a long time past have yielded, to said Union Company nine thousand dollars per month, which said sum is ample to pay all operating and other expenses of said Union Company property and to proceed with the drilling of whatever additional wells might reasonably be required, besides paying all proper debts and obligations owed by said Union Company, so that no assessment upon the stock of said Union Company for any legitimate purpose was necessary. That said Union Company stock is of nominal value, the common stock thereof now selling on the public oil exchange market at San Francisco at one cent per share assessment paid, said preferred shares bearing no quotation at all, and are not worth, as your orator believes and alleges, to exceed two and one-half cents per share. That it was not rea-



sonable to be expected that an assessment of one cent per share levied upon said preferred and common stock would be paid by the stockholders of said Union Company. That on October 2d, 1913, the holders of 1,269,184 shares of preferred stock, and of 2,633,687 shares of common stock of said Union Company actually did become delinquent in payment of said assessment, and their respective shares of stock were by said Union Company advertised to be sold at public auction on said 14th day of October, 1913, and large quantities of such stock, the precise number of shares whereof is to your orator unknown, were actually on said 14th day of October, 1913, sold or pretended to be sold, and were, as your orator is informed and believes and so charges the fact to be, purchased by said Union Company, or by said schemers, or by one or more of them, or [23] by persons acting in behalf of said schemers or of one or more of them or of said Union Company. That among the shares of stock so sold your orator is informed and believes, and so charges the fact to be, were those shares pretended by said Union Company to belong to your orator, which shares had been set aside as aforesaid by said Union Company to your orator as a holder and owner of stock in said Palmer Company as aforesaid.

### XIII.

Your orator further shows, that after the attempted cancellation by said Union Company of said two million dollars of bonds as aforesaid, said Union Company caused to remain upon the property covered by said bonds which included all of the property

of said Palmer Company so pretended to be transferred to said Union Company, a bonded indebtedness of one million dollars. Your orator is informed and believes and alleges that said Union Company sold five hundred thousand dollars of said bonds, and the money derived therefrom, the amount of which is unknown to your orator, said directors recklessly and wantonly spent partially upon said property and partially for purposes unknown to your orator. That two hundred and fifty thousand dollars of said bonds, your orator is informed and believes and so charges the fact to be, were deposited with defendant Anglo-California Trust Company, as security for the payment of two hundred and Fifty Thousand Dollars, the purchase price agreed to be paid by said Union Company for said lands theretofore held by said Palmer Senior Oil Company under option of purchase as aforesaid, and sundry sums of money, the amounts of which is to your orator unknown, have been by said Union Company paid to said Anglo-California Trust Company on account of the purchase of said lands, and your orator prays discovery of the amount of said bonds sold or parted with by said Union Company and to whom delivered, and the purposes [24] for which delivered and the respective amounts thereof.

#### XIV.

Your orator further shows upon his information and belief that the said directors of said Union Company have operated and now are operating said Palmer Company properties in an extravagant and reckless manner, calculated to wreck said property

through creating heavy indebtedness thereupon; that your orator is informed and believes and alleges that said Union Company is now heavily in debt, without any justification for such indebtedness; that the income of said yielding wells upon said property, at all times, has been ample to defray all costs of operating said property and making reasonable extensions of wells thereupon. Your orator is advised, believes and alleges that as a result of said fraudulent transfer of the assets of said Palmer Company to said Union Company, said Palmer Company properties may be or become liable for a proportion of the indebtedness so created by said Union Company, which said pretended indebtedness may cause great loss to the stockholders of said Palmer Company. And your orator prays discovery of all the debts, bonded or otherwise, which are, or may become by operation of law, a charge upon any of the property of said Palmer Company so transferred to said Union Company, with the respective amounts, dates of creation and maturity thereof and names of parties to whom the same is owing. Your orator shows that said defendants, either in their capacities as directors of said Palmer Company or of said Union Company, have sunk upon said Palmer Company properties and upon said Union Company properties, eight wells (the total number of wells upon said property being fifteen), none of which said eight wells have produced oil but are out of commission and have at all times been out of [25] commission; that all of such wells have been sunk in an inefficient and unworkmanlike manner and are at



present a loss to said Palmer Company and said Union Company. That said wells are all of great depth, running from 2,500 to 3,200 feet and entailed great cost in their sinking. That two flowing wells on said Palmer Company property were by said schemers shut down for long period and permitted to sand up, and when reopened the sand was not removed from said wells so that the flowing of such wells would be resumed, but said wells were put on pumps, so that, instead of five thousand barrels of oil per day being derived from each of such flowing wells, three hundred barrels of oil per day become the output of each of such wells. Your orator is informed and believes and alleges that said reckless and wasteful manner of handling and operating said property was intentionally and designedly done for the purpose of impairing the values of said property, and reducing the value of the shares of the stock of said Union Company on the market, and ultimately of providing an excuse for said Union Company levying assessments upon the capital stock of said Union Company, with the intention on part of the said schemers in control of said Union Company, by levying assessments upon the capital stock of said Union Company under conditions in which such assessments would be paid by none of the stockholders of said Union Company except themselves, to cause large quantities of stock of said Union Company to be sold for delinquent assessments at which sales it might be brought in by said Union Company, thereby greatly increasing the value of the stocks owned by said schemers

in said Union Company, and whereby most of the other stockholders of said Union Company would be eliminated, but payments of their own assessments would be made out of large salaries and charges due to or made by them severally [26] from or against said Union Company; thereafter, said schemers, so remaining in control of said Union Company property and of said Palmer Company property, designing and intending to repair said out-of-commission wells, and said flowing wells which are now pumping, so that large quantities of oil will be then produced therefrom, which large production of oil would cause a great rise in the market value and the immediate salability of said Union Company stock, nearly all of which, it is the intention of said schemers, your orator believes and so alleges, shall at such time be owned by themselves.

XV.

That your orator was and has been and now is the owner and holder of said one thousand shares of the capital stock of said Palmer Company at all times herein mentioned since prior to said 21st day of October, 1911; and your orator did not consent to the transfer of said assets of said Palmer Company to said Union Company, and did not at any time consent to, and had no knowledge of the transfer by said defendant directors of said Union Company bonds belonging to said Palmer Company to said Union Company in exchange for the preferred shares of said Union Company, and did not deliver up his said Palmer Company stock to said Union Company in exchange for said preferred and common stock

of said Union Company. That this suit is not a collusive one to confer on a court of the United States jurisdiction of a case of which it would not otherwise have cognizance, and no demand has been made by your orator upon the directors or upon the stockholders of said Palmer Company to do and perform the things herein prayed on behalf of said Palmer Company to be performed, or to bring suit in court therefor, for the reason that the said Board of Directors of said Palmer Company are the persons, or are in control of the [27] persons, who have committed the frauds herein alleged, and that said directors also control  $\frac{2}{3}$ ds of the issued and outstanding capital stock of said Palmer Company, and for your orator to call them or any of them to do the things aforesaid would be futile and vain; and for the further reason that said directors of said Palmer Company have attempted and sought to extinguish said Palmer Oil Company by causing to be filed with the County Clerk and Secretary of State as aforesaid said amended Articles of Incorporation whereby, if the said amendment was legal and effective, said Palmer Company has expired and no longer exists, and said directors now claim and maintain that said Palmer Company does not either in fact, or in law, now exist, and that they are no longer directors or officers thereof.

#### XVI.

That the amount in controversy herein exceeds, exclusive of interest and costs, the sum of \$3,000.00, and there exists to your orator no plain, adequate and complete remedy at law.



## XVII.

That all and several the frauds herein mentioned as having been committed by the said defendants, directors as aforesaid, or either of them, of the said Palmer Oil Company and of the said Union Company were not discovered or made known to your orator before six months from this date. Your orator resides in the State of Ohio, and had no personal knowledge of the facts herein set forth at the time they occurred or soon thereafter. That the defendants above named, from time to time, made representations to your orator concerning said matters and things which were false and untrue, and none of said representations made to your orator by said defendants contained any of the facts above set forth, which constitute and show the said frauds upon said Palmer Company and the minority stockholders thereof, and your [28] orator trusted and believed the said representations of said defendants, and relied thereon, and did not discover any of the facts above set forth concerning the frauds above described, before the time above mentioned, when he began to make investigations upon his own account and discovered for the first time said facts above set forth.

## WHEREFORE YOUR ORATOR PRAYS:

1. That the transfer by which the assets of said Palmer Company were conveyed to said Union Company be declared null and void and of no effect, and that a decree be entered herein directing the said Union Company to reconvey said assets to said Palmer Company, or to a receiver, if such receiver be

appointed as hereinafter prayed.

2. That an accounting be had between said Palmer Company and said Union Company and that there be determined the amount of indebtedness, if any, created by said Union Company, which shall be borne by said Palmer Company assets, and the amount, if any, which may be due by said Union Company to said Palmer Company, and that the several defendants make full and true discovery and disclosure of and concerning all the matters and things hereinbefore mentioned.

3. That upon a decree being entered setting aside and avoiding said transfer, and restoring to said Palmer Company its said assets, if said Palmer Company be found to be disincorporated, that a receiver be appointed to receive and manage such assets, instead of said trustees, and to distribute such assets to the stockholders of said Palmer Company.

4. That said Union Company be decreed to restore to all and several the stockholders of said Palmer Company who may join herein and who shall return to said Union Company its said preferred and common stock, their several shares of Palmer Company stock theretofore [29] by them delivered to said Union Company.

5. That the transaction whereby said Union Company acquired from said Palmer Senior Oil Company the said option to purchase of defendant Anglo-California Trust Company the lands covered by said option, in security for the purchase of which lands by said Union Company two hundred thousand dollars of bonds of said Union Company were by said

Union Company deposited with said Anglo-California Trust Company, be rescinded in so far as said bonds constitute any lien or claims upon the assets of said Palmer Company, and that all mortgages or other liens or claims upon the property of said Palmer Company, so transferred to said Union Company, executed, made or given by said Union Company, be declared null and void and of no effect.

6. That a decree be entered adjudging that the redelivery by said Palmer Company directors of said two million (2,000,000) dollars of Union Company bonds back to said Union Company was wrongful, and a fraud upon said Palmer Company; that said attempted cancellation by said Union Company of said bonds was noneffective; that said Union Company at all times held said bonds to the use of said Palmer Company, subject to avoidance by said Palmer Company of its minority stockholders acting in its behalf, of said transfer of said assets.

7. That a decree be entered adjudging that the said Frank L. Brown, Lewis A. Hilborn, J. C. Kemp Van Ee, H. C. Stratton and Charles E. Ladd, directors of said Palmer Oil Company at the time said assets of said Palmer Company were transferred to said Union Company and at the time said bonds were delivered to said Union Company, jointly and severally as individuals, pay unto the said Palmer Oil Company for the use and benefit of its said stockholders the sum of two million dollars.

8. That your orator be allowed for the payment of his solicitors herein, such reasonable fee as your Honors may determine, for [30] the services per-



formed and to be performed in and about the litigation herein, and that such allowance be declared a lien upon the property of said Palmer Company and of said Union Company, to be paid to such solicitors therefrom.

9. And such other and further relief as your Honors may at any time find meet and equitable.

May it please your Honors to grant unto your orator, a writ of subpoena of the United States of America directed to said Palmer Union Oil Company, Palmer Oil Company, Frank L. Brown, Lewis A. Hilborn, George L. Walker, Charles E. Ladd, Gavin McNab, H. C. Stratton and George I. Stewart, as directors of said Palmer Union Oil Company and in their respective individual capacities; Frank L. Brown, J. C. Kemp Van Ee, Lewis A. Hilborn, H. C. Stratton and Charles E. Ladd, as directors of Palmer Oil Company, and in their respective individual capacities; and Anglo-California Trust Company, a corporation, commanding them on a day certain to appear and answer unto this bill of complaint and to abide and perform such order and decree in the premises as to the Court shall seem proper and required by the principles of equity and good conscience.

JOHN E. BENNETT,  
JESSE OLNEY,

Solicitors and Counsel for Complainant. [31]

United States of America,  
State of California,  
City and County of San Francisco,—ss.

Jesse Olney, being duly sworn, deposes and says:

I am one of the attorneys of the complainant in the foregoing amended bill of complaint.

I have read the said amended bill of complaint and know the contents thereof, and that the same is true of my own knowledge except as to those matters therein stated to be alleged upon information and belief, and as to those matters I believe it to be true.

The reason this verification is not made by the complainant is that he is not within the State of California or the City and County of San Francisco nor the Northern District of California, in which said city and county and said Northern District my office is located.

JESSE OLNEY.

Subscribed and sworn to before me this fifteen day of November, 1913.

[Seal] W. B. MALING,  
Clerk U. S. District Court, Northern District of  
California.

[Endorsed]: Filed Nov. 15, 1913. W. B. Maling,  
Clerk. By J. A. Schaertzer, Deputy Clerk. [32]

**Subpoena Ad Respondendum.**

UNITED STATES OF AMERICA.

*District Court of the United States, Northern District of California, Second Division.*

## IN EQUITY.

The President of the United States of America,  
Greeting: to Palmer Oil Company, a Corporation.

YOU ARE HEREBY COMMANDED, That you be and appear in said District Court of the United States, Second Division, aforesaid, at the courtroom in San Francisco, twenty days from the date hereof, to answer an Amended Bill of Complaint exhibited against you in said Court by ANDREW CLAUSS, who is a citizen of the State of Ohio, and to do and receive what the said Court shall have considered in that behalf.

Witness, the Honorable WILLIAM C. VAN FLEET, Judge of said District Court, this 15th day of November; in the year of our Lord one thousand nine hundred and thirteen and of our Independence the 138th.

[Seal]

WALTER B. MALING,  
Clerk.

By J. A. Schaertzer,  
Deputy Clerk.



MEMORANDUM PURSUANT TO RULE 12,  
RULES OF PRACTICE FOR THE COURTS  
OF EQUITY OF THE UNITED STATES.

YOU ARE HEREBY REQUIRED to file your answer or other defense in the above suit, on or before the twentieth day after service, excluding the day thereof, of this subpoena, at the Clerk's Office of said Court, pursuant to said bill: otherwise the said bill may be taken *pro confesso*.

WALTER B. MALING,  
Clerk.

By J. A. Schaertzer,  
Deputy Clerk. [33]

**Return on Service of Writ.**

United States of America,  
Northern District of California,—ss.

I hereby certify and return that I served the annexed Subpoena Ad Respondendum on the therein named Palmer Oil Company, a corporation, by handing to and leaving an attested copy thereof with Robt. R. Moody, Secretary of the Palmer Oil Company, a corporation, personally, at San Francisco, in said District, on the 4th day of December, A. D. 1913.

C. T. ELLIOTT,  
U. S. Marshal.

By Paul J. Arnerich,  
Deputy.

I further return that the said Robt. R. Moody denied that he was the Secretary of the Palmer Oil Co., a Corp.

The undersigned further says that supplementary

to the said service he asked the said Moody the following questions:

1. Is the Palmer Oil Company now in existence as a corporation? To which said Moody replied: No.

2. If the Palmer Oil Company be not now in existence, when did it go out of existence? To which said Moody replied as follows: March 28th, 1913.

3. If said Palmer Oil Company is out of existence, who was the secretary of said company at the time it went out of existence? To which said Moody replied as follows: He was secretary for some three months prior to the Palmer Oil Co. going out of existence and that he did not know who was secretary on the date that it went out of existence.

C. T. ELLIOTT,

U. S. Marshal.

By Paul J. Arnerich,

Office Deputy. [34]

[Endorsed]: Filed December 5, 1913. W. B. Mal-  
ing, Clerk. By J. A. Schaertzer, Deputy Clerk.  
[35]

*In the District Court of the United States, in and  
for the Northern District of California, Second  
Division.*

IN EQUITY.

ANDREW CLAUSS,

Plaintiff,

vs.

PALMER UNION OIL COMPANY, a Corpora-  
tion, et al.,

Defendants.

**Motion of Palmer Union Oil Company to Dismiss  
Amended Bill of Complaint.**

To the Honorable, the Judges of the United States  
District Court in and for the Northern District  
of California, Second Division:

Palmer Union Oil Company, one of the above-  
named corporation defendants, through its solicitors  
herein, hereby moves to dismiss the amended bill of  
complaint herein as against it, upon the following  
and each of the following grounds, to wit:

I.

That the Court has no jurisdiction of the subject  
matter of the action, for the following, and each of  
the following, reasons:

(a) As the matter under controversy does not ex-  
ceed, exclusive of interest and costs, the sum or value  
of Three Thousand (3,000) Dollars;

(b) As the suit is one of a local nature, to recover  
and place in the hands of a receiver real property  
and personal property situated in the Southern Dis-



trict of the State of California, of which the defendant corporation is an inhabitant and a citizen.

## II.

That there is a nonjoinder of parties defendant, in [36] this: that Palmer Senior Oil Company is a necessary party, and has not been joined.

## III.

That there is a nonjoinder of parties defendant, in this: that the creditors of Palmer Oil Company are necessary parties, and have not been joined.

## IV.

That the said bill of complaint fails to comply with Equity Rule No. 25, in this: that it does not contain the usual caption showing the parties plaintiff and defendant.

## V.

That the bill fails to comply with Equity Rule No. 25, second subdivision, in that it does not contain a short and plain, or any statement of the grounds upon which the Court's jurisdiction depends.

## VI.

That the said bill herein fails to comply with Equity Rule No. 25, subdivision third, in this: that it does not contain a short and simple statement of the ultimate facts upon which the plaintiff asks relief, omitting mere statements of evidence.

## VII.

That the said bill fails to comply with Equity Rule No. 25, subdivision fourth, in this: that it does not state why the creditors of defendant Palmer Oil Company are not made parties.

## VIII.

That there is a misjoinder of causes of action herein, to wit: the joinder of a stockholder's bill to set aside a sale of the assets of Palmer Oil Company and recover same, with an action against the directors of said company for the value of said assets.

## IX.

That there is a misjoinder of causes of action herein, [37] to wit: the joinder of a stockholder's bill to set aside the sale and transfer of the assets of said corporation made in exchange for stock and bonds, with a cause of action affirming such sale and transfer, and seeking recovery of the consideration therefor.

## X.

That there is a misjoinder of causes of action herein, to wit: the joinder of a cause of action to avoid the cancellation of the bonds above referred to, with a cause of action against the directors of Palmer Oil Company for selling said bonds to Palmer Union Oil Company.

## XI.

That the facts set forth in said bill are insufficient to constitute a valid cause of action in equity.

## XII.

That said bill is multifarious.

## XIII.

That said bill fails to comply with Equity Rule No. 38, in that it fails to show that the question involved is one of common or general interest to many persons, and that said persons constitute a class so numerous as to make it impracticable to bring them

all before the Court.

XIV.

That the said bill fails to comply with Equity Rule No. 27, in that it does not allege that the plaintiff was a shareholder at the time of the transaction of which he complains, or that his share has devolved on him since by operation of law.

Respectfully submitted,

GAVIN McNAB,

R. P. HENSHALL, [38]

N. SCHMULOWITZ,

ROBT. R. MOODY,

B. M. AIKINS,

Solicitors for said Defendant.

[Endorsed]: Filed Nov. 25, 1913. W. B. Maling,  
Clerk. [39]

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*In the District Court of the United States, in and  
for the Northern District of California, Second  
Division.*

IN EQUITY.

ANDREW CLAUSS,

Plaintiff,

vs.

PALMER UNION OIL COMPANY, a Corpora-  
tion, et al.,

Defendants.



**Motion of George I. Stewart and Gavin McNab to  
Dismiss Amended Bill of Complaint.**

To the Honorable, the Judges of the United States  
District Court in and for the Northern District  
of California, Second Division:

George I. Stewart and Gavin McNab, defendants  
above named, sued herein as directors of Palmer  
Union Oil Company, and in their individual capacities,  
through their solicitors herein, hereby move to  
dismiss the amended bill of complaint herein as  
against them (1) in their individual capacities, and  
(2) as directors of Palmer Union Oil Company, upon  
the following and each of the following grounds, to  
wit:

I.

That as individual defendants they are improperly  
joined as defendants herein.

II.

That the facts set forth in said bill are insufficient  
to constitute a valid cause of action in equity as  
against them in their individual capacities.

III.

That as directors of Palmer Union Oil Company  
they are improperly joined as parties defendant.  
[40]

IV.

That the Court has no jurisdiction of the subject  
matter of the action, for the following, and each of  
the following reasons:

(a) As the matter under controversy does not  
exceed, exclusive of interest and costs, the sum or

value of Three Thousand (3,000) Dollars;

(b) As the suit is one of a local nature, to recover and place in the hands of a receiver real property and personal property situated in the Southern District of the State of California, of which the defendant corporation is an inhabitant and a citizen.

V.

That there is a nonjoinder of parties defendant, in this: that Palmer Senior Oil Company is a necessary party, and has not been joined.

VI.

That there is a nonjoinder of parties defendant, in this: that the creditors of Palmer Oil Company are necessary parties, and have not been joined.

VII.

That the said bill of complaint fails to comply with Equity Rule No. 25, in this: that it does not contain the usual caption showing the parties plaintiff and defendant.

VIII.

That the bill fails to comply with Equity Rule No. 25, a second subdivision, in that it does not contain a short and plain, or any statement of the grounds upon which the Court's jurisdiction depends.

IX.

That the said bill herein fails to comply with Equity Rule No. 25, subdivision third, in this: that it does not contain a [41] short and simple statement of the ultimate facts upon which the plaintiff asks relief, omitting mere statements of evidence.

X.

That the said bill fails to comply with Equity Rule

No. 25, subdivision fourth, in this: that it does not state why the creditors of defendant Palmer Oil Company are not made parties.

### XI.

That there is a misjoinder of causes of action herein, to wit: the joinder of a stockholder's bill to set aside a sale of the assets of Palmer Oil Company and recover same, with an action against the directors of said Company for the value of said assets.

### XII.

That there is a misjoinder of causes of action herein, to wit: the joinder of a stockholder's bill to set aside the sale and transfer of the assets of said corporation made in exchange for stock and bonds, with a cause of action affirming such sale and transfer, and seeking recovery of the consideration therefor.

### XIII.

That there is a misjoinder of causes of action herein, to wit: the joinder of a cause of action to avoid the cancellation of the bonds above referred to, with a cause of action against the directors of Palmer Oil Company for selling said bonds to Palmer Union Oil Company.

### XIV.

That there is a misjoinder of causes of action herein, to wit: the joinder of a suit in equity for the return of assets traced into the possession of Palmer Union Oil Company, with an action at law for the value of the assets against the directors of Palmer Oil Company.



## XV.

That the facts set forth in said bill are insufficient [42] to constitute a valid cause of action in equity.

## XVI.

That said bill is multifarious.

## XVII.

That said bill fails to comply with Equity Rule No. 38, in that it fails to show that the question involved is one of common or general interest to many persons, and that said persons constitute a class so numerous as to make it impracticable to bring them all before the Court.

## XVIII.

That the said bill fails to comply with Equity Rule No. 27, in that it does not allege that the plaintiff was a shareholder at the time of the transaction of which he complains, or that his share has devolved on him since by operation of law.

Respectfully submitted,

LUTHER ELKINS,

Solicitors for the Above-named Defendants.

[Endorsed]: Filed Nov. 25, 1913. W. B. Maling,  
Clerk. [43]

*In the District Court of the United States, in and  
for the Northern District of California, Second  
Division.*

IN EQUITY.

ANDREW CLAUSS,

Plaintiff,

vs.

PALMER UNION OIL COMPANY, a Corpora-  
tion, et al.,

Defendants.

**Motion of Anglo-California Trust Company to Dis-  
miss Amended Bill of Complaint.**

To the Honorable, the Judges of the United States  
District Court in and for the Northern District  
of California, Second Division:

Anglo-California Trust Company, one of the above-  
named corporation defendants, through its solicitor  
herein, hereby moves to dismiss the amended bill of  
complaint herein as against it, upon the following  
and each of the following grounds, to wit:

I.

That the facts set forth in said bill are insufficient  
to constitute a valid cause of action in equity as  
against it.

Respectfully submitted,

GAVIN McNAB,

Solicitor for the Above-named Defendant Corpora-  
tion.

[Endorsed]: Filed Nov. 25, 1913. W. B. Maling,  
Clerk. [44]

*In the District Court of the United States, in and  
for the Northern District of California, Second  
Division.*

IN EQUITY.

ANDREW CLAUSS,

Plaintiff,

vs.

PALMER UNION OIL COMPANY, a Corpora-  
tion, et al.,

Defendants.

**Motion of Frank L. Brown, Lewis A. Hilborn, George  
L. Walker, Charles E. Ladd and H. C. Stratton  
to Dismiss Amended Bill of Complaint.**

To the Honorable, the Judges of the United States  
District Court in and for the Northern District  
of California, Second Division:

Frank L. Brown, Lewis A. Hilborn, George L.  
Walker, Charles E. Ladd and H. C. Stratton, defend-  
ants above named, sued herein as directors of Palmer  
Union Oil Company, and in their individual capa-  
cities, and as directors or trustees of Palmer Oil  
Company, through their solicitors herein, hereby  
move to dismiss the amended bill of complaint herein  
as against them (1) in their individual capacities,  
(2) as directors of Palmer Union Oil Company, and  
(3) directors or trustees of Palmer Oil Company,  
upon the following grounds, and each thereof, to wit:

I.

That as individual defendants they are improperly  
joined as defendants herein.



II.

That as directors of Palmer Union Oil Company they are improperly joined as defendants herein.

III.

That they are improperly joined as parties defendant "as directors of said Palmer Oil Company" "or trustees thereof, if said corporation be defunct," for the reason that it cannot be [45] determined in which of said capacities they are being sued.

IV.

That the Court has no jurisdiction of the subject matter of the action, for the following, and each of the following reasons:

(a) As the matter under controversy does not exceed, exclusive of interest and costs, the sum or value of Three Thousand (3,000) Dollars;

(b) As the suit is one of a local nature, to recover and place in the hands of a receiver real property and personal property situated in the Southern District of the State of California, of which the defendant corporation is an inhabitant and a citizen.

V.

That there is a nonjoinder of parties defendant, in this: that Palmer Senior Oil Company is a necessary party, and has not been joined.

VI.

That there is a nonjoinder of parties defendant, in this: that the creditors of Palmer Oil Company are necessary parties, and have not been joined.

VII.

That the said bill of complaint fails to comply with Equity Rule No. 25, in this: that it does not contain

the usual caption showing the parties plaintiff and defendant.

### VIII.

That the bill fails to comply with Equity Rule No. 25, second subdivision, in that it does not contain a short and plain, or any statement of the grounds upon which the Court's jurisdiction depends.

### IX.

That the said bill herein fails to comply with Equity Rule [46] No. 25, subdivision third, in this: that it does not contain a short and simple statement of the ultimate facts upon which the plaintiff asks relief, omitting mere statements of evidence.

### X.

That the said bill fails to comply with Equity Rule No. 25, subdivision fourth, in this: that it does not state why the creditors of defendant Palmer Oil Company are not made parties.

### XI.

That there is a misjoinder of causes of action herein, to wit: the joinder of a stockholder's bill to set aside a sale of the assets of Palmer Oil Company and recover same, with an action against the directors of said company for the value of said assets.

### XII.

That there is a misjoinder of causes of action herein, to wit: the joinder of a stockholder's bill to set aside the sale and transfer of the assets of said corporation made in exchange for stock and bonds, with a cause of action affirming such sale and transfer, and seeking recovery of the consideration therefor.

## XIII.

That there is a misjoinder of causes of action herein, to wit: the joinder of a cause of action to avoid the cancellation of the bonds above referred to with a cause of action against the directors of Palmer Oil Company for selling said bonds to Palmer Union Oil Company.

## XIV.

That there is a misjoinder of causes of action herein, to wit: the joinder of a suit in equity for the return of assets traced into the possession of Palmer Union Oil Company, with an action at law for the value of the assets against the directors of Palmer Oil Company. [47]

## XV.

That there is a misjoinder of causes of action herein, to wit: the joinder of a suit in equity for the return to Palmer Oil Company of assets traced into the possession of Palmer Union Oil Company, with a suit for the delivery to the stockholders of Palmer Oil Company of said assets.

## XVI.

That the facts set forth in said bill are insufficient to constitute a valid cause of action in equity.

## XVII.

That the said bill is multifarious.

## XVIII.

That said bill fails to comply with Equity Rule No. 38, in that it fails to show that the question involved is one of common or general interest to many persons, and that said persons constitute a class so numerous as to make it impracticable to bring them



all before the Court.

XIX.

That the said bill fails to comply with Equity Rule No. 27, in that it does not allege that the plaintiff was a shareholder at the time of the transaction of which he complains, or that his share has devolved on him since by operation of law.

Respectfully submitted,

GAVIN McNAB,  
R. P. HENSHALL,  
N. SCHMULOWITZ,  
ROBT. R. MOODY,  
B. M. AIKINS,

Solicitors for the Above-named Defendants

[Endorsed]: Filed Nov. 25, 1913. W. B. Maling,  
Clerk. [48]

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*In the District Court of the United States, in and  
for the Northern District of California, Second  
Division.*

IN EQUITY.

ANDREW CLAUSS,

Plaintiff,

vs.

PALMER UNION OIL COMPANY, a Corpora-  
tion, et al.,

Defendants.

**Motion of J. C. Kemp Van Ee to Dismiss Amended  
Bill of Complaint.**

To the Honorable Judges of the United States District Court, in and for the Northern District of California, Second Division :

J. C. Kemp Van Ee, sued herein or attempted to be sued herein as a director of Palmer Oil Company, or alternatively as a trustee thereof, and in his individual capacity, hereby moves to dismiss the amended bill of complaint herein, upon the following grounds, and each thereof, to wit:

I.

That the facts set forth in said bill are insufficient to constitute a valid cause of action in equity as to him.

II.

That the bill is multifarious.

III.

That it cannot be determined from the bill whether he is sued as a director of Palmer Oil Company, an existing corporation, or as trustee for the stockholders of Palmer Oil Company, a defunct corporation.

IV.

That there is a nonjoinder of parties defendant, in this: That the creditors of Palmer Oil Company are necessary parties [49] and have not been joined.

V.

Upon each of the grounds set forth in the motion

of Frank L. Brown and others, already filed herein.

Respectfully submitted,

GAVIN McNAB,  
R. P. HENSHALL,  
ROBT. R. MOODY,  
B. M. AIKINS,  
N. SCHMULOWITZ,

Solicitors for the Above-named Defendants.

Receipt of a copy of the within is acknowledged  
this 30th day of December 1913.

JESSE OLNEY &  
JOHN E. BENNETT,  
Attorneys for Plaintiff.

[Endorsed]: Filed Dec. 30, 1913. W. B. Maling,  
Clerk. By J. A. Schaertzer, Deputy Clerk. [50]

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*In the District Court of the United States, in and  
for the Northern District of California, Second  
Division.*

No. 45.

ANDREW CLAUSS,

Plaintiff,

vs.

PALMER UNION OIL COMPANY, a Corpora-  
tion, et al.,

Defendants.

**Order Pro Confesso.**

In this cause the defendants Palmer Union Oil  
Company, a corporation, Frank L. Brown, Lewis A.  
Hilborn, George L. Walker, Charles E. Ladd, Gavin



McNab, H. C. Stratton, and George I. Stewart, as directors of said Palmer Union Oil Company, and in their respective and individual capacities, Frank L. Brown, J. C. Kemp Van Ee, Lewis A. Hilborn, H. C. Stratton, and Charles E. Ladd, as directors of Palmer Union Oil Company, a corporation, and in their respective and individual capacities, Anglo-California Trust Company, a corporation, and Palmer Oil Company, a corporation, having been served with process and the amended bill of complaint, as appears from the record and papers on file herein, and having failed to answer to plaintiff's amended bill of complaint within the time allowed by the rules, and the time for answering the amended bill of complaint having expired;

Now, upon application of John E. Bennett and Jesse Olney, Esqs., attorneys for plaintiff, it is hereby ordered that the amended bill of complaint herein be and the same is hereby taken *pro confesso* against Palmer Union Oil Company, a corporation, Frank L. Brown, Lewis A. Hilborn, George L. Walker, Charles E. Ladd, Gavin McNab, H. C. Stratton, and George I. Stewart, as directors of said Palmer Union Oil Company, and in their respective and individual capacities, Frank L. Brown, J. C. Kemp Van Ee, [51] Lewis A. Hilborn, H. C. Stratton, and Charles E. Ladd, as directors of Palmer Oil Company, a corporation, and in their respective and individual capacities, Anglo-California Trust Company, a corpo-

ration, and Palmer Oil Company, a corporation.

Entered January 19, 1914.

WALTER B. MALING,

Clerk.

By J. A. Schaertzer,

Deputy Clerk. [52]

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*In the District Court of the United States, in and  
for the Northern District of California, Second  
Division.*

IN EQUITY.

ANDREW CLAUSS,

Plaintiff,

vs.

PALMER UNION OIL COMPANY, a Corpora-  
tion, et al.,

Defendants.

**Notice of Motion [of Defendant Palmer Union Oil  
Co.] for an Order Vacating Decree Pro Con-  
fesso.**

To the Plaintiff in the Above-entitled Action, and to  
John E. Bennett, Esq., and Jesse Olney, Esq.,  
His Attorneys:

YOU AND EACH OF YOU WILL PLEASE  
TAKE NOTICE that the defendant Palmer Union  
Oil Company in the above-entitled action will move  
the above-entitled court, sitting in its courtroom, in  
the Postoffice Building, in the City and County of  
San Francisco, within the Northern District of Cali-  
fornia, at the hour of four o'clock P. M., of the

26th day of January, 1914, for an order vacating, annulling, setting aside and rescinding that certain order or decree *pro confesso* made and entered by the Clerk of the above-entitled court on the 19th day of January, 1914, in so far as the defendant above named is concerned, and in and by which said order or decree *pro confesso* it was ordered that the amended bill of complaint herein be and the same was thereby or was attempted thereby to be taken *pro confesso* against Palmer Union Oil Company, a corporation, Frank L. Brown, Lewis A. Hilborn, George L. Walker, Charles E. Ladd, Gavin McNab, H. C. Stratton and George I. Stewart, as directors of said Palmer Union Oil Company, and in their respective and individual capacities, Frank L. Brown, J. C. Kemp Van Ee, Lewis A. Hilborn, H. C. Stratton and Charles E. Ladd, as directors of Palmer Oil [53] Company, a corporation, and in their respective and individual capacities, Anglo-California Trust Company, a corporation, and Palmer Oil Company, a corporation.

Said motion and application will be made and based upon the grounds following, to wit:

1. That said order or decree *pro confesso* so entered by the clerk as aforesaid, was and is void upon its face.

2. That at the time said order or decree *pro confesso* was attempted to be entered as aforesaid, said defendant was not in default.

3. That at the time said order or decree *pro confesso* was attempted to be entered, said defendant had duly served and filed, as required by the equity



rules, a motion to dismiss said amended bill of complaint, and that said motion to dismiss was then pending and had not been determined.

4. That the entry of an order or decree *pro confesso* for failure to answer an amended bill of complaint when the defendant thereto had served and filed a motion to dismiss said amended bill of complaint, as required by the equity rules, was and is void.

5. That said defendant was not or could not be in default for failing to answer said amended bill of complaint, as attempted to be recited in said order or decree *pro confesso*, when the records of the Court showed that said defendant had, within the time allowed by said equity rules, filed a motion to dismiss said amended bill of complaint, and that said motion to dismiss was then pending and undetermined.

6. That said defendant had, within the time allowed by said equity rules, presented a defense to said amended bill of complaint, and that said defense was, at the time said order or decree *pro confesso* was attempted to be entered, before the Court and undetermined,—all as required and as permitted by Equity [54] Rule No. 29.

Upon the hearing of said motion and application, reference will be made and had to all the papers and pleadings on file in this action, to said order or decree *pro confesso*, to the books kept by the Clerk of this Court, referred to in Equity Rule No. 3, to the affidavit of Gavin McNab and an order of Court, copies of which are herewith served upon you, and to

this notice of motion.

Dated: January 21, 1914.

GAVIN McNAB,  
R. P. HENSHALL,  
B. M. AIKINS,  
R. R. MOODY,

Attorneys for Said Defendant.

Copy of the within Notice of Motion, Order of Court, and Affidavit of Gavin McNab is hereby admitted this —— day of January, 1914.

JESSE OLNEY,  
JOHN E. BENNETT,  
Attorneys for Plaintiffs.

[Endorsed]: Filed Jan. 21, 1914. W. B. Maling, Clerk. By J. A. Schaertzer, Deputy Clerk. [55]

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*In the District Court of the United States, in and  
for the Northern District of California, Second  
Division.*

IN EQUITY.

ANDREW CLAUSS,

Plaintiff,

vs.

PALMER UNION OIL COMPANY, a Corpora-  
tion et al.,

Defendants.

**Notice of Motion [of Defendants Frank L. Brown et al.] for an Order Vacating Decree Pro Confesso.**

To the Plaintiff in the Above-entitled Action, and  
to John E. Bennett, Esq., and Jesse Olney, Esq.,  
His Attorney:

YOU AND EACH OF YOU WILL PLEASE TAKE NOTICE that the defendants in the above-entitled action, named as follows: Frank L. Brown, Lewis A. Hilborn, George L. Walker, Charles E. Ladd and H. C. Stratton, sued herein as directors of Palmer Union Oil Company, and in their individual capacities, and as directors or trustees of Palmer Oil Company, will move the above-entitled Court, sitting in its courtroom, in the Postoffice Building, in the City and County of San Francisco, within the Northern District of California, at the hour of four o'clock P. M., of the 26th day of January, 1914, for an order vacating, annulling, setting aside and rescinding that certain order or decree *pro confesso* made and entered by the Clerk of the above-entitled Court on the 19th day of January, 1914, in so far as the defendants above named are concerned, and in and by which said order or decree *pro confesso* it was ordered that the amended bill of complaint herein be and the same was thereby or was attempted thereby to be taken *pro confesso* against Palmer Union Oil Company, [56] a corporation, Frank L. Brown, Lewis A. Hilborn, George L. Walker, Charles E. Ladd, Gavin McNab, H. C. Stratton and George I. Stewart, as directors of said



Palmer Union Oil Company, and in their respective and individual capacities, Frank L. Brown, J. C. Kemp Van Ee, Lewis A. Hilborn, H. C. Stratton and Charles E. Ladd, as directors of Palmer Oil Company, a corporation, and in their respective and individual capacities, Anglo-California Trust Company, a corporation, and Palmer Oil Company, a corporation.

Said motion and application will be made and based upon the grounds following, to wit:

1. That said order or decree *pro confesso* so entered by the Clerk as aforesaid was and is void upon its face.

2. That at the time said order or decree *pro confesso* was attempted to be entered as aforesaid, none of said defendants was in default.

3. That at the time said order or decree *pro confesso* was attempted to be entered, each of said defendants had duly served and filed, as required by the equity rules, a motion to dismiss said amended bill of complaint, and that said motion to dismiss was then pending and had not been determined.

4. That the entry of an order or decree *pro confesso* for failure to answer an amended bill of complaint when the defendants thereto had served and filed a motion to dismiss said amended bill of complaint, as required by the equity rules, was and is void.

5. That none of said defendants was or could be in default for failing to answer said amended bill of complaint, as attempted to be recited in said order or decree *pro confesso*, when the records of the Court

showed that said defendants had, within the time allowed by said equity rules, filed a motion to dismiss said [57] amended bill of complaint, and that said motion to dismiss was then pending and undetermined.

6. That each of said defendants had, within the time allowed by said equity rules, presented a defense to said amended bill of complaint, and that said defense was, at the time said order or decree *pro confesso* was attempted to be entered, before the Court and undetermined,—all as required and as permitted by Equity Rule No. 29.

Upon the hearing of said motion and application, reference will be made and had to all the papers and pleadings on file in this action, to said order or decree *pro confesso*, to the books kept by the Clerk of this Court, referred to in Equity Rule No. 3, and to the affidavit of Gavin McNab and an order of Court, copies of which are herewith served upon you, and to this notice of motion.

Dated, January 21, 1914.

GAVIN McNAB,  
R. P. HENSHALL,  
R. R. MOODY,  
B. M. AIKINS,

Attorneys for said Defendants.

Copy of the within notice of motion, order of Court, and affidavit of Gavin McNab is hereby admitted this — day of January, 1914.

JESSE OLNEY,  
JOHN E. BENNETT,  
Attorneys for Plaintiff.

[Endorsed]: Filed Jan. 21, 1914. W. B. Maling,  
Clerk. By J. A. Schaertzer, Deputy Clerk. [58]

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*In the District Court of the United States in and for  
the Northern District of California, Second  
Division.*

IN EQUITY.

ANDREW CLAUSS,

Plaintiff,

vs.

PALMER UNION OIL COMPANY, a Corpora-  
tion, et al.,

Defendants.

**Affidavit of Gavin McNab.**

State of California,  
City and County of San Francisco,  
Northern District of California,—ss.

Gavin McNab, being first duly sworn, deposes and says: That he is one of the defendants named in the above-entitled action, and that he is also one of the attorneys for certain of the defendants in said action; that he is familiar with all the facts and matters alleged in the amended bill of complaint on file herein, and is also familiar with the defense on the merits to the alleged cause of action set forth in said amended bill of complaint on behalf of each and all of the defendants thereto; that he has fully and fairly stated all the facts of said case to the solicitors and counsel for the defendants herein, to wit, to R. R. Moody and to R. P. Henshall, and he has been



advised by said counsel and by each of them, and he verily believes, that he, as one of the defendants, and that each of the defendants, has a good defense on the merits to the action.

GAVIN McNAB.

Subscribed and sworn to before me this 21st day of January, 1914.

[Seal]

W. W. HEALEY,  
Notary Public in and for the City and County of  
San Francisco, State of California. [59]

[Endorsed]: Filed Jan. 21, 1914. W. B. Maling,  
Clerk. By J. A. Schaertzer, Deputy Clerk. [60]

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At a stated term, to wit, the November term, A. D. 1913, of the District Court of the United States of America, in and for the Northern District of California, Second Division, held at the courtroom, in the City and County of San Francisco, on Monday, the 26th day of January, in the year of our Lord one thousand nine hundred and fourteen. Present: The Honorable MAURICE T. DOOLING, District Judge.

EQUITY—45.

ANDREW CLAUSS,

vs.

PALMER UNION OIL CO. et al.

[Order Granting Motions to Vacate Order Taking  
Amended Bill Pro Confesso; and Vacating  
Former Order, etc.]

Defendants' motions to vacate order taking

amended bill *pro confesso* came on regularly for hearing and being submitted after arguments and fully considered, it was ordered that said motions be and the same are hereby granted, and the order heretofore entered taking the amended bill *pro confesso* is hereby vacated and set aside as to each and all of the said defendants.

Ordered that defendants' motions to dismiss the amended bill be continued to Thursday, January 29, 1914, at 4 o'clock P. M. [61]

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*In the District Court of the United States, in and for the Northern District of California, Second Division.*

No. 45—EQ.

ANDREW CLAUSS,

Plaintiff,

vs.

PALMER UNION OIL COMPANY, a Corporation,  
et al.,

Defendants.

**Opinion on Motion to Dismiss Amended Bill of  
Complaint.**

JOHN E. BENNETT & JESSE OLNEY, Solicitors  
and Counsel for Complainant.

GAVIN McNAB, B. M. AIKINS, R. P. HEN-  
SHALL, R. R. MOODY, N. SCHMULOWITZ  
and LUTHER ELKINS, Solicitors and Coun-  
sel for Defendants.

This matter having been heretofore argued and

submitted, the Court is of the opinion:

1. That the Court has jurisdiction of the subject matter;

2. That the Palmer Senior Oil Company and the bondholders of the Palmer Union Company are necessary parties, but that the creditors of the Palmer Oil Company are not necessary parties hereto;

3. That the amended bill should contain the usual caption showing the parties plaintiff and defendant;

4. That the bill sufficiently complies with the requirements of the second, third and fourth subdivisions of Equity Rule 25;

5. That there is a misjoinder of causes of action in that the bill seeks to set aside a transfer, and seeks also to recover from the directors the value of the property transferred;

6. That there is a misjoinder of causes of action in that the bill seeks to set aside a transfer, and seeks also to [62] recover the consideration for such transfer from the transferee;

7. That the facts set forth are sufficient to constitute a valid cause of action in equity;

8. That by reason of the nonjoinder of necessary parties, and the misjoinder of causes of action the bill should be dismissed.

The motion to dismiss is, therefore, granted.

March 2d, 1914.

MAURICE T. DOOLING,  
Judge.

[Endorsed]: Filed Mar. 2, 1914. W. B. Maling,  
Clerk. By J. A. Schaertzer, Deputy Clerk. [63]



At a stated term, to wit, the March Term, A. D. 1914, of the District Court of the United States of America, in and for the Northern District of California, Second Division, held at the courtroom, in the City and County of San Francisco, on Monday, the 2d day of March, in the year of our Lord one thousand nine hundred and fourteen. Present: The Honorable MAURICE T. DOOLING, District Judge.

No. 45—EQUITY.

ANDREW CLAUSS

vs.

PALMER OIL CO. et al.

**Order Dismissing Suit.**

Defendants' motion to dismiss the amended bill of complaint herein, heretofore heard and submitted, being now fully considered and the Court having filed its memorandum opinion, it was ordered in accordance therewith that said motion be and the same is hereby granted, and that this suit be and the same is hereby dismissed. [64]

*In the District Court of the United States in and for  
the Northern District of California, Second  
Division.*

IN EQUITY—No. 45.

ANDREW CLAUSS,

Plaintiff,

vs.

PALMER UNION OIL COMPANY, a Corpora-  
tion, et al.,

Defendants.

**Decree Dismissing Amended Bill of Complaint.**

The motion of the defendants herein to dismiss the Amended Bill of Complaint herein having been granted, and an order having been made and entered herein that a decree be granted accordingly:

It is hereby ORDERED, ADJUDGED and DECREED, that the Amended Bill of Complaint of Andrew Clauss, the plaintiff herein, be, and the same is, hereby dismissed, and that the defendants do have and recover from plaintiff their costs, taxed at \_\_\_\_\_ dollars (\$\_\_\_\_\_).

Dated this 4 day of March, 1914.

M. T. DOOLING,

Judge.

[Endorsed]: Filed and entered March 4, 1914.  
Walter B. Maling, Clerk. By J. A. Schaertzer,  
Deputy Clerk. [65]

[**Motion to Amend Order of March 2, 1914; to Vacate Decree of March 4, 1914, and to Amend Amended Complaint.**]

*In the District Court of the United States, in and for the Northern District of California, Second Division.*

IN EQUITY—No. 45.

ANDREW CLAUSS,

Plaintiff,

vs.

PALMER UNION OIL COMPANY, a Corporation,  
et al.,

Defendants.

MOTION TO AMEND THE ORDER OF THIS COURT, DATED AND ENTERED MARCH 2d, 1914, AND TO VACATE AND SET ASIDE THE DECREE HERETOFORE ENTERED IN THIS CAUSE OF DATE MARCH 4th, 1914, AND FOR AN ORDER GRANTING LEAVE TO PLAINTIFF TO AMEND HIS AMENDED BILL OF COMPLAINT.

To the Honorable, the Judges of the United States District Court in and for the Northern District of California, Second Division:

Comes now Andrew Clauss, the plaintiff above named, and shows to the Court:

First, that the order heretofore entered by this Court on the 2d day of March, 1914, in the following words:



“Defendant’s motion to dismiss the Amended Bill of Complaint herein, heretofore heard and submitted, being now fully considered and the Court having filed its memorandum opinion, it was ordered in accordance therewith that said motion be and the same is hereby granted, and that this suit be, and the same is hereby, dismissed.”

That the said order was entered by the clerk of this court on said 2d day of March, without notice in any form thereof to the plaintiff, and that the same is erroneous in that no opportunity was given to the plaintiff to amend his said bill of complaint in accordance with said memorandum opinion, or to make application for leave to make such amendment, and in dismissing said suit without giving to the plaintiff such opportunity to amend his said complaint, the clerk of this court never [66] having mailed or otherwise sent or delivered to the plaintiff, or his attorneys herein, any notice of or otherwise informing plaintiff or his said attorneys of the existence or entry of said order, until Friday, the 6th day of March, 1914.

That two days after said 2d day of March, 1914, to wit, on the 4th day of March, 1914, the following decree was entered by this Court in this cause, viz.:

“The motion of the defendants herein, to dismiss the Amended Bill of Complaint herein, having been granted, and an order having been made and entered herein that a decree be granted accordingly:

It is hereby ORDERED, ADJUDGED and DECREED, that the Amended Bill of Complaint of Andrew Clauss, the plaintiff herein, be, and the same is, hereby dismissed, and that the defendants do have and recover from plaintiff their costs, taxed at ——— dollars (\$———).

Dated this 4th day of March, 1914.

M. T. DOOLING,  
Judge.

[Endorsed]: Filed and entered March 4th, 1914. Walter B. Maling, Clerk. By J. A. Schaertzer, Deputy Clerk."

That said decree was entered without any notice to the plaintiff or his attorneys herein, in any manner or form whatever, that the same had been rendered, or any notice to him or his said attorneys, that the said order above mentioned had been entered in the said cause; and that the plaintiff and his attorneys had no knowledge of the fact that either said order or said decree had been rendered or entered in this cause, until informed thereof by the deputy clerk of this court, Mr. Schaertzer, on Friday morning, March 6th, 1914, in a casual [67] conversation on a railroad train coming to San Francisco, and the said decree was inadvertently, improvidently and improperly entered in this cause.

Whereupon the plaintiff above named moves this Honorable Court that the said order heretofore rendered in this cause on the second day of March, 1914, which said order was duly entered on that day, be amended and corrected by striking out the concluding words thereof, to wit: "That this suit be

and the same is hereby dismissed," and inserting instead thereof the following words: "and that unless the plaintiff within a reasonable time amends his said Amended Bill in manner and form to remove the defects therein declared in the Court's aforesaid memorandum opinion, that this suit be and is hereby dismissed without prejudice."

That said decree dismissing said Amended Bill of Complaint dated the 4th day of March, 1914, be vacated and set aside and held for naught.

That plaintiff above named further moves this Honorable Court that he may be at liberty to amend his said Amended Bill of Complaint in the following particulars:

First: That said Amended Bill of Complaint be dismissed without prejudice, as to the following defendants, viz.: Anglo-California Trust Company, a corporation, Frank L. Brown, J. C. Kemp Van Ee, Lewis A. Hilborn, George L. Walker, Charles E. Ladd, H. C. Stratton, Gavin McNab and George I. Stewart, as individuals and as directors either of said Palmer Union Oil Company or as directors of said Palmer Oil Company.

Second: That there be stricken from the first prayer of said Amended Bill of Complaint, the last line thereof which reads as follows: "or to a receiver, if such receiver be appointed as hereinafter prayed." [68]

Third: That the prayers for relief contained in said Amended Bill of Complaint numbered 3, 5, 6, and 7 be stricken out.

Fourth: That so much of said Amended Bill of



Complaint beginning with the words "California, having its principal place of business at Sisquoc," etc., at line 30, page 1 of said Amended Bill of Complaint, and ending with the word "capacities," at line 14, on page 2 of said Amended Bill, be stricken out, and that there be inserted in lieu thereof the following: "California, having its principal place of business in the City and County of San Francisco, State of California, and Frank L. Brown, J. C. Kemp Van Ee, Lewis A. Hilborn, H. C. Stratton and Charles E. Ladd, in so far as they claim to be, or may be found to be, Trustees of said Palmer Oil Company, the said Frank L. Brown, J. C. Kemp Van Ee, Lewis A. Hilborn, H. C. Stratton and Charles E. Ladd, claiming that said Palmer Oil Company has been dissolved and no longer exists as a corporation. Complainant alleges on information and belief that there are no creditors existing of said Palmer Oil Company."

Fifth: That the title of this cause in said Amended Bill of Complaint be amended to read as follows:

ANDREW CLAUSS,

Plaintiff,

vs.

PALMER UNION OIL COMPANY, a Corporation,  
FRANK L. BROWN, LEWIS A. HIL-  
BORN, GEORGE L. WALKER, CHARLES  
E. LADD, GAVIN McNAB, H. C. STRAT-  
TON and GEORGE I. STEWART, as Direct-  
ors of Said PALMER UNION OIL COM-

PANY and in Their Respective and Individual Capacities, FRANK L. BROWN, J. C. KEMP VAN EE, LEWIS A. HILBORN, H. C. STRATTON and CHARLES E. LADD, as Directors of PALMER OIL COMPANY, a Corporation, and in Their Respective Individual Capacities, ANGLO-CALIFORNIA TRUST COMPANY, a Corporation, FIRST DOE, SECOND DOE, THIRD DOE, FOURTH DOE, FIFTH DOE, SIXTH DOE, SEVENTH DOE, EIGHTH DOE, NINTH DOE, TENTH DOE, PALMER OIL COMPANY, a Corporation,

Defendants. [69]

Sixth: And complainant prays for such further and other relief as to the Court may seem meet and equitable.

Dated March 10th, 1914.

JESSE OLNEY,  
JOHN E. BENNETT,  
Solicitors for Complainant.

[Endorsed]: Filed Mar. 10, 1914. W. B. Maling,  
Clerk. By J. A. Schaertzer, Deputy Clerk. [70]

*In the District Court of the United States, in and for  
the Northern District of California, Second  
Division.*

No. 45—EQ.

ANDREW CLAUSS,

Plaintiff,

vs.

PALMER UNION OIL COMPANY, a Corporation,  
et al.,

Defendants.

**Opinion and Order Denying a Motion for Leave to  
File an Amended Bill of Complaint.**

JOHN E. BENNETT and JESSE OLNEY, Soli-  
citors and Counsel for Complainant.

GAVIN McNAB, B. M. AIKINS, R. P. HEN-  
SHALL, R. R. MOODY, N. SCHMULOWITZ  
and LUTHER ELKINS, Solicitors and Coun-  
sel for Defendants.

This is a motion for leave to file an amended bill of complaint, or rather to file amendments to a bill of complaint heretofore dismissed by the Court. It was held in dismissing the bill that the Court had jurisdiction of the subject matter, but in so holding the Court was only passing upon the question as to the amount involved in the controversy. The action is one brought by a single stockholder of the Palmer Oil Company, a California corporation, such stockholder being a citizen of the State of Ohio, and owning one thousand shares of stock, which, as may be gathered from other averments of the bill, are



worth not to exceed fifteen hundred dollars. The relief sought is the setting aside, on the ground of fraud, of a transfer made by the corporation of property stated to be worth \$2,500,000.00, the plaintiff averring that the action is brought on behalf of himself and all others similarly situated. After the filing of said bill, a petition was presented by the attorneys for plaintiff on behalf of [71] fifteen other stockholders of said Palmer Oil Company asking leave to intervene, and such leave having been granted by the Court, said attorneys filed a bill of intervention by said fifteen stockholders identical in all essential particulars with the original complaint. In this bill of intervention twelve of the plaintiffs owning 125,567 shares are citizens of California, and three owning 3,500 shares are citizens of other States. So that if the present motion were granted, we would have a situation with four plaintiffs citizens of other States owning in all 4,500 shares, and twelve plaintiffs citizens of California owning 125,567 shares, all in this court clinging to the complaint of a single stockholder, resident of Ohio, owning but 1,000 shares; and all represented by the attorneys of the original plaintiff. Under these circumstances, aside from the fact that the proposed amendments are for the most part amendments to the prayer of the original bill, and not amendments to the bill itself, the motion to amend will be denied, and it is so ordered.

April 3d, 1914.

M. T. DOOLING,  
Judge.

[Endorsed]: Filed Apr. 3, 1914. W. B. Maling, Clerk. By J. A. Schaertzer, Deputy Clerk. [72]

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At a stated term, to wit, the March term, A. D. 1914, of the District Court of the United States of America, in and for the Northern District of California, Second Division, held at the courtroom in the City and County of San Francisco, on Friday, the 3d day of April, in the year of our Lord one thousand nine hundred and fourteen. Present: The Honorable MAURICE T. DOOLING, District Judge.

No. 45—EQUITY.

ANDREW CLAUSS,

vs.

PALMER UNION OIL CO. et als.

**Order Denying Motion to Amend Order of March 2, 1914, etc.**

Plaintiff's motion to amend the order entered herein on March 2d, 1914, to vacate and set aside the decree herein, and for leave to amend the amended bill, heretofore heard and submitted, being now fully considered and the Court having filed its opinion thereon, it is ordered that said motion be and the same is hereby denied. [73]

*In the District Court of the United States, in and for  
the Northern District of California, Second  
Division.*

No. 45—IN EQUITY.

ANDREW CLAUSS,

Plaintiff,

vs.

PALMER UNION OIL COMPANY, a Corporation,  
FRANK L. BROWN, LEWIS A. HIL-  
BORN, GEORGE L. WALKER, CHARLES  
E. LADD, GAVIN McNAB, H. C. STRAT-  
TON and GEORGE I. STEWART, as Direct-  
ors of Said PALMER UNION OIL COM-  
PANY and in Their Respective and Individual  
Capacities, FRANK L. BROWN, J. C.  
KEMP VAN EE, LEWIS A. HILBORN,  
H. C. STRATTON and CHARLES E. LADD,  
as Directors of PALMER OIL COMPANY,  
a Corporation, and in Their Respective and  
Individual Capacities, ANGLO-CALIFOR-  
NIA TRUST COMPANY, a Corporation,  
FIRST DOE, SECOND DOE, THIRD DOE,  
FOURTH DOE, FIFTH DOE, SIXTH  
DOE, SEVENTH DOE, EIGHTH DOE,  
NINTH DOE, TENTH DOE, PALMER OIL  
COMPANY, a Corporation,

Defendants.



**Petition for Allowance of Appeal.**

To the Honorable M. T. DOOLING, Sitting in the  
Above-entitled Court:

The above-named complainant, and Victor Enginger, W. A. Grubb, Joseph Hamm, K. Halter, L. Schott, L. Lait, E. W. Clark, Jean A. Gourselle, M. C. Brooke, H. L. Brooke, Jesse W. Olney, Lilly M. Stewart, Theodore B. Wilcox, F. L. Shull, and Alvin J. Whitman, coplaintiffs and interveners in the above-entitled cause, conceiving themselves aggrieved by the final decree made and entered in the above-entitled cause March 4, 1914, dismissing the bill of complaint herein, and by the interlocutory orders of said Court of January 26, 1914, vacating the decree *pro confesso* theretofore entered against Palmer Union Oil Company, Lewis A. Hilborn and Palmer Oil Company, defendants, and March 2, 1914, ordering the suit of complainant herein to be dismissed, and also by the order of said [74] Court of April 3, 1914, denying complainant's motion for leave to amend his amended bill of complaint, and to amend said order of March 2, 1914, and to vacate said final decree of March 4, 1914, do hereby appeal from the said orders and decree to the United States Circuit Court of Appeals for the Ninth Judicial Circuit, for the reasons specified in the assignment of errors on file herein, and pray that this appeal may be allowed, and also that an order be made fixing the amount of the bond on such appeal, and that a transcript of the record, papers and proceedings upon which said orders and decree were made, duly

authenticated, may be sent to the United States Court of Appeals for the Ninth Judicial Circuit.

JOHN E. BENNETT,

JESSE OLNEY,

Solicitors for Complainant, and for said Coplaintiffs and interveners.

[Endorsed]: Filed Apr. 7, 1914. W. B. Maling, Clerk. By J. A. Schaertzer, Deputy Clerk. [75]

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*In the District Court of the United States, in and for the Northern District of California, Second Division.*

No. 45—IN EQUITY.

ANDREW CLAUSS,

Plaintiff,

vs.

PALMER UNION OIL COMPANY, a Corporation, FRANK L. BROWN, LEWIS A. HILBORN, GEORGE L. WALKER, CHARLES E. LADD, GAVIN McNAB, H. C. STRATTON, and GEORGE I. STEWART, as Directors of Said PALMER UNION OIL COMPANY, and in Their Respective and Individual Capacities, FRANK L. BROWN, J. C. KEMP VAN EE, LEWIS A. HILBORN, H. C. STRATTON and CHARLES E. LADD, as Directors of PALMER OIL COMPANY, a Corporation, and in Their Respective Individual Capacities, ANGLO-CALIFORNIA TRUST COMPANY, a Corporation, FIRST

DOE, SECOND DOE, THIRD DOE,  
FOURTH DOE, FIFTH DOE, SIXTH  
DOE, SEVENTH DOE, EIGHTH DOE,  
NINTH DOE, TENTH DOE, PALMER  
OIL COMPANY, a Corporation,  
Defendants.

**Assignment of Errors.**

Comes now the above-named complainant, and Victor Enginger, W. A. Grubb, Joseph Hamm, K. Halter, L. Schott, L. Lait, E. W. Clark, Jean A. Gourselle, M. C. Brooke, H. L. Brooke, Jesse W. Olney, Lilly M. Stewart, Theodore B. Wilcox, F. L. Shull, and Alvin J. Whitman, all coplaintiffs and interveners, in the above-entitled cause, and specify and file the following assignment of errors upon which they will rely upon their appeal from the final decree filed and entered in the above-entitled action, March 4, 1914, dismiss the bill of complaint herein and from the interlocutory orders of said Court of January 26, 1914, vacating the decree *pro confesso* theretofore entered against Palmer Union Oil Company, a corporation, Lewis A. Hilborn, and Palmer Oil Company, a corporation, defendants, and the order of said Court of March 2, 1914, ordering the suit of complainant herein to be dismissed, and also from the order of said Court of April 3, 1914, denying complainant's [76] motion for leave to amend his amended bill, and to amend said order of March 2, 1914, and to vacate said final decree of March 4, 1914, in the above-entitled cause:

1. That the above-entitled court erred in granting the motions interposed by defendants Palmer



Union Oil Company, a corporation, and Lewis A. Hilborn, to vacate and set aside the decree *pro confesso* entered against them, and in vacating and setting aside said decree *pro confesso* by its said order of January 26, 1914;

2. That the said Court erred in vacating and setting aside of its own motion the decree *pro confesso* entered herein against the defendant Palmer Oil Company, a corporation, by its said order of January 26, 1914;

3. That said Court erred in granting the motions to dismiss the amended bill of complaint filed on behalf of the several defendants (excepting the Palmer Oil Company, a corporation, which entered no appearance in said cause).

4. That said Court erred in its order of March 2, 1914, entered upon said motions, which directed that "this *suit* be and the same is hereby dismissed."

5. That said Court erred in dismissing said amended bill of complaint and entering final decree thereon, March 4, 1914, in favor of said defendants;

6. That said Court erred in denying the motion interposed by the complainant to amend the said order of the Court of March 2, 1914, and to vacate and set aside said decree of March 4, 1914, and for leave to amend his amended bill of complaint, and by making and entering its said order to that effect on April 3, 1914.

Now, in order that the foregoing assignment of errors may be and appear of record, complainant, and the said coplaintiffs [77] and interveners, present the same to the Court, and pray that such

disposition thereof be made as is in accordance with law and the statutes of the United States in such cases made and provided, with equity, and with the new equity rules of this court, and pray that the said orders and the decree dismissing said complainant's amended bill of complaint be reversed.

JOHN E. BENNETT,

JESSE OLNEY,

Solicitors for Complainant, and for said Coplaintiffs  
and Interveners.

[Endorsed]: Filed Apr. 7, 1914. W. B. Maling,  
Clerk. By J. A. Schaertzer, Deputy Clerk. [78]

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*In the District Court of the United States, in and  
for the Northern District of California, Second  
Division.*

No. 45—IN EQUITY.

ANDREW CLAUSS,

Plaintiff,

vs.

PALMER UNION OIL COMPANY, a Corpora-  
tion, FRANK L. BROWN, LEWIS A. HIL-  
BORN, GEORGE L. WALKER, CHARLES  
E. LADD, GAVIN McNAB, H. C. STRAT-  
TON, and GEORGE I. STEWART, as Di-  
rectors of Said PALMER UNION OIL  
COMPANY, and in Their Respective and In-  
dividual Capacities, FRANK L. BROWN, J.  
C. KEMP VAN EE, LEWIS A. HILBORN,  
H. C. STRATTON, and CHARLES E. LADD,  
as Directors of PALMER OIL COMPANY, a

Corporation, and in Their Respective and Individual Capacities, ANGLO-CALIFORNIA TRUST COMPANY, a Corporation, FIRST DOE, SECOND DOE, THIRD DOE, FOURTH DOE, FIFTH DOE, SIXTH DOE, SEVENTH DOE, EIGHTH DOE, NINTH DOE, TENTH DOE, PALMER OIL COMPANY, a Corporation,  
Defendants.

### **Order Allowing Appeal.**

On filing the petition of complainant, and of Victor Enginger, W. A. Grubb, Joseph Hamm, K. Halter, L. Lait, E. W. Clark, Jean A. Gourselle, M. C. Brooke, H. L. Brooke, Jesse W. Olney, Lilly M. Stewart, Theodore B. Wilcox, F. L. Shull, and Alvin J. Whitman, coplaintiffs and interveners, for an order allowing an appeal, together with an assignment of errors;

It is ordered that an appeal to the United States Circuit Court of Appeals, for the Ninth Judicial Circuit, from the final decree heretofore filed and entered herein March 4, 1914, and from the interlocutory orders of January 26, 1914, and March 2, 1914, and from the order of April 3, 1914, be, and the same hereby is, allowed, and that a certified transcript of the record, papers and proceedings upon which said orders and decree were made, duly authenticated, be forthwith transmitted to said United States Circuit Court of Appeals; [79]

It is further ordered that the bond on appeal be fixed at the sum of Five Hundred Dollars.



Done in open court this 8th day of April, 1914.

M. T. DOOLING,

Judge.

[Endorsed]: Filed Apr. 8, 1914. W. B. Maling,  
Clerk. By J. A. Schaertzer, Deputy Clerk. [80]

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30,305—14.

UNITED STATES FIDELITY AND GUARANTY  
COMPANY.

Capital Paid in Cash \$2,000,000. Total Resources  
Over \$6,000,000.

Home Office:  
Baltimore, Md.

*In the District Court of the United States, in and for  
the Northern District of California, Second  
Division.*

ANDREW CLAUSS,

Plaintiff,

vs.

PALMER UNION OIL COMPANY, a Corporation,  
FRANK L. BROWN, LEWIS A. HIL-  
BORN, GEORGE L. WALKER, CHARLES  
E. LADD, GAVIN McNAB, H. C. STRAT-  
TON and GEORGE I. STEWART, as Direct-  
ors of Said PALMER UNION OIL COM-  
PANY and in Their Respective and Individual  
Capacities, FRANK L. BROWN, J. C.  
KEMP VAN EE, LEWIS A. HILBORN,  
H. C. STRATTON and CHARLES E. LADD,  
as Directors of PALMER OIL COMPANY,  
a Corporation, and in Their Respective and

Individual Capacities, ANGLO-CALIFORNIA TRUST COMPANY, a Corporation, FIRST DOE, SECOND DOE, THIRD DOE, FOURTH DOE, FIFTH DOE, SIXTH DOE, SEVENTH DOE, EIGHTH DOE, NINTH DOE, TENTH DOE, PALMER OIL COMPANY, a Corporation,

Defendants.

**Bond on Appeal.**

KNOW ALL MEN BY THESE PRESENTS: That, WHEREAS, lately in the District Court of the United States in and for the Northern District of California, Second Division, in a suit pending in said court between Andrew Clauss, complainant, and Palmer Union Oil Company, a corporation, and Frank L. Brown, Lewis A. Hilborn, George L. Walker, Charles E. Ladd, Gavin McNab, H. C. Stratton and George I. Stewart, as Directors of said Palmer Union Oil Company, and in their respective and individual capacities, Frank L. Brown, J. C. Kemp Van Ee, [81] Lewis A. Hilborn, H. C. Stratton and Charles E. Ladd, as directors of Palmer Oil Company, a corporation, and in their respective and individual capacities, Anglo-California Trust Company, a corporation, and Palmer Oil Company, a corporation, defendants, a final decree and certain orders were rendered against said Andrew Clauss, complainant, and the said complainant having obtained from said Court an order allowing an appeal to the United States Circuit Court of Appeals, for the Ninth Judicial District, to reverse the decree and orders in the aforesaid suit, and a citation directed

to said aforesaid defendants is about to be issued, citing and admonishing them to be and appear at the United States Circuit Court of Appeals for the Ninth Circuit, to be holden at San Francisco, California:

NOW THEREFORE, in consideration of the premises and of such appeal the United States Fidelity & Guaranty Company, a corporation organized under the laws of the State of Maryland and having its principal place of business in the city of Baltimore, and having a paid-up capital and surplus of Two Million (\$2,000,000) Dollars, duly incorporated under the laws of the said State of Maryland, for the purpose of making and guaranteeing and becoming surety upon bonds or undertakings required or authorized by law, is held and firmly bound unto the above-named defendants in the full and just sum of Five Hundred (\$500) Dollars, lawful money of the United States of America, for which payment, well and truly to be made, said United States Fidelity & Guaranty Company, a corporation, binds itself by these presents:

The condition of the above obligation is such that if the said Andrew Clauss, complainant, and Victor Enginger, W. A. Grubb, Joseph Hamm, K. Halter, L. Schett, L. Lait, E. W. Clark, Joan A. Gourselle, M. C. Brooke, H. L. Brooke, Jesse W. Olney, Lilly M. Stewart, Theodore B. Wilcox, F. L. Shull and Alvin J. Whitman, [82] coplaintiffs and interveners and appellants, together with said complainant, shall prosecute their appeal to effect and shall answer all damages and costs that may be awarded against them, if they fail to make their plea good,



then the above obligation to be void; otherwise to remain in full force and virtue;

IN WITNESS WHEREOF, the said United States Fidelity & Guaranty Company has caused this obligation to be signed by its duly authorized attorney-in-fact, and its corporate seal to be hereunto affixed at San Francisco, California, this 8th day of April, 1914.

UNITED STATES FIDELITY & GUAR-  
ANTY COMPANY.

[Seal]

By JESSE M. WHITED,  
Attorney-in-Fact.

Approved April 9th, 1914.

M. T. DOOLING,  
Judge.

State of California,

City and County of San Francisco,—ss.

On this 8th day of April, in the year one thousand nine hundred and 14, before me, Alice Spencer, a notary public in and for the City and County of San Francisco, personally appeared Jesse M. Whited, known to me to be the persons whose names are subscribed to the within instrument as the attorney-in-fact of the United States Fidelity and Guaranty Company, and acknowledged to me that they subscribed the name of the United States Fidelity and Guaranty Company thereto as principal, and their own names as attorneys-in-fact.

[Seal]

ALICE SPENCER,  
Notary Public in and for the City and County of San  
Francisco, State of California. [83]

[Endorsed]: Filed Apr. 9, 1914. W. B. Maling,  
Clerk. By J. A. Schaertzer, Deputy Clerk. [84]

## Docket, United States District Court.

| Docket 45.                      | Title of Case.   | Attorneys.   |
|---------------------------------|--|--|
| ANDREW CLAUSS,                  |  | JESSE OLNEY — JOHN E. BENNETT.                                     |
|                                 | vs.  | Eq. To restrain sale of stocks, etc.                               |
| PALMER UNION OIL COMPANY et al. |  | GAVIN McNAB, R. P. HENSHALL, ROBERT R. MOODY.<br>BRONTE M. AIKINS. |
| Date.<br>Month. Day. Year.      | Filings—Proceedings.   |  |
| Oct. 7, 1913.                   | Filed Bill of Complaint. Issued <i>Subpoena ad Res</i> and 5 copies.   |  |
| “ 8, “                          | Filed Order to Show Cause and Restraining Order. Filed Undertaking on Restraining Order made <i>certi</i> -copy of Restraining Order   |  |
| “ 11, “                         | Filed Amendment to Bill. Filed Affidavit of Lewis A. Hilborn. Ord. Application for Injunction argued, submitted and denied and restraining order dissolved. Filed <i>Subpoena ad Res</i> , with Marshal's Return showing service on Lewis A. Hilborn & Palmer Union Oil Co. on Oct. 8, 1913. |  |
| “ 15, “                         | Filed Application for Order to Take Deposition.  |  |
| “ 16, “                         | Issued Subpoena for witness.   |  |
| “ 21, “                         | Filed Subpoena. Filed Deposition of H. C. Stratton. Filed Notice of Motion to tax costs of deposition against deft. Filed Affidavit of service.  |  |
| “ 25, “                         | Ord. motion con. to Nov. 1.  |  |
| “ 27, “                         | Made 2 certified copies of <i>Subpoena ad Res</i> .  |  |
| “ 28, “                         | Taking Oath and Jurat to Affidavit. Filed Affidavit and Order directing absent defendant to appear, etc. Made certified copy of order. Filed Order extending time to plead. Entered Order (O. B. No. 1, p. 131). Filed Answer of Hilborn & Palmer Union Oil Co. [85]                         |  |

Date.

Month. Day. Year.

- Nov. 1, 1913. Filed Petition to Tax Cost of Taking of Deposition. Ord. mo. to tax costs con. to 8.
- “ 4, “ Filed Order Extending Time.
- “ 5, “ Filed Appearance of Frank L. Brown.
- “ 7, “ Filed Petition to Intervene. Filed Order allowing V. Enginger et al. to Intervene. Entered Order (O. B. No. 1, p. 137). Filed Bill of Intervention of V. Enginger et al. Filed Petition. Filed Order Making W. H. James a Complainant. Entered Order (O. B. No. 1, p. 138). Filed Bill of Intervention of William H. James.
- “ 8, “ Filed Motion to Dismiss Bill. Ord. petition for order taxing costs argued and submitted.
- “ 13, “ Filed Order Denying Petition, etc. Ord. petition for order taxing cost of taking deposition denied. Made 2 copies of order and mailed same to plff. and 1 to defts.
- “ 15, “ Oath and Jurat to Affidavit of Olney. Filed Petition for leave to amend bill. Filed Order granting leave to amend bill. Entered Order (O. B. No. 1, p. 147). Filed Amended Bill of Complaint. Filed praecipe. Issued *Subpoena ad Res* and 1 copy.
- “ 17, “ Filed Affidavit of Service of Amended Bill. Filed Marshal's Return of Service of Warning Order.
- “ 25, “ Filed Motion of Palmer Union Oil Co. to Dismiss. Filed Motion of Geo. I. Stewart to Dismiss. Filed Motion of Anglo-California Trust Co. to Dismiss. Filed Motion of Brown et al. to Dismiss Amended Bill.
- Dec. 5, “ Filed *Subpoena ad Res*. with Marshal's Return showing service on Palmer Oil Co. on Dec. 4, 1913.



Date.  
Month. Day. Year.

Dec. 30, 1913. Filed Motion of J. C. Kemp Van Ee to Dismiss.

“ 30, “ Amended bill.

[86]

Jan. 19, 1914. Filed Praecipe. Entered Order Taking Bill *Pro Confesso*. (O. B. No. 1, p. 178.) Mailed 3 copies to defendant's attorneys.

“ 21, 1914. Filed Notice of Motion to Vacate Order *Pro Confesso*. Filed Notice of Motion to Set Hearing of Motion to Dismiss. Filed Notice of Motion to Vacate Order, etc. Filed Notice of Motion to Set Hearing, etc. Filed Notice of Motion to Vacate Order, etc. Filed Notice of Motion to Set Hearing, etc. Filed Notice of Motion to Vacate Order, etc. Filed Notice of Motion to Set Hearing, etc. Filed Notice of Motion to Vacate Order, etc. Filed Notice of Motion to Set Hearing, etc. Filed Affidavit of Gavin McNab. Filed Order Setting Time for hearing of Motions, etc. Entered Order (O. B. No. 1, p. 186).

“ 22, “ Filed Stipulation continuing hearing of Motions.

“ 26, “ Filed Mem. of Authorities on Motion to Vacate Order. Filed Mem. of Authorities on Motions to Dismiss. Ord. motions to vacate order taking amended bill *pro confesso* argued, submitted and granted, etc., and motions to dismiss con. to 29.

“ 29, “ Filed Supplemental Memorandum of Authorities. Ord. motions to dismiss argued and submitted.

Mar. 2, “ Filed Opinion on Motions to dismiss. Ord. motions to dismiss amended bill granted and cause dismissed. Made 3 copies of Order dismissing cause. Mailed copy of Order. to Atty. for Plff. Mailed copy of order to Attys. for Defts. Mailed copy of Order to [87] Atty. for Intervenors.

Date.

Month. Day. Year.

Mar. 4, 1914. Filed and entered Decree dismissing amended bill. (Eq. Journal No. 1, p. 270.) Made and filed Enrolled Papers. Dockets. Made and mailed copy of Decree to Plff. Made and mailed copy of Decree to Atty. for Inter-venors.

“ 10, “ Filed Motion to Amend Order and Vacate Decree, etc. Filed Notice of Motion to Amend, etc. Filed Affidavit of service of Motion, etc.

“ 19, “ Filed Plff's Mem. of Authorities.

“ 21, “ Ord. motion con. to 28.

“ 28. “ Ord. motion to amend, etc., argued and submitted.

Apr. 3, “ Filed Opinion and Order Denying Motion, etc. Ord. motion to vacate decree and for leave to file an amended bill denied. Made 2 copies of Order. Mailed 1 to plff's attys. and 1 to deft's attys.

“ 7, “ Filed Petition for Appeal. Filed Assignment of Errors. Filed Praecipe for Transcript.

“ 8, “ Filed Order Allowing Appeal. Filed Appeal Bond.

“ 14. “ Filed Citation. [88]

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*In the District Court of the United States, in and for  
the Northern District of California, Second  
Division.*

No. 45—IN EQUITY.

ANDREW CLAUSS,

Plaintiff,

vs.

PALMER UNION OIL COMPANY, a Corporation,  
et als.,

Defendants.

**Praeceptum for Transcript.**

To Walter B. Maling, Esqr., Clerk of the Above-entitled Court:

You will please transmit the following certified transcript of the record, papers, and proceedings in the above-entitled cause to the United States Circuit Court of Appeals for the Ninth Circuit, as follows:

1. Amended Bill of Complaint.
2. Certificate by yourself as Clerk showing Docket Entry of the filing of Answer by Palmer Union Oil Company and Lewis A. Hilborn, to original bill of complaint, and date thereof.
3. Subpoena issued to Palmer Oil Company, a corporation, defendant, and return of service by U. S. Marshal thereon.
4. Notice of motion to vacate decree *pro confesso* by Palmer Union Oil Company, and affidavit of Gavin McNab, attached thereto.
5. Notice of motion to vacate decree *pro confesso* by Lewis A. Hilborn, and affidavit of Gavin McNab attached thereto.
6. Order vacating said decree *pro confesso* against all defendants.
7. Motion to dismiss amended bill of complaint by all defendants.
8. Memorandum of Opinion dated March 2, 1914.
9. Order of March 2, 1914, dismissing suit. [89]
10. Final Decree of March 4, 1914.
11. Complainant's motion dated March 10th, 1914, to amend said order, vacate said decree, and praying leave to amend.



12. Memorandum of opinion of April 3, 1914.

13. Order thereof of April 3, 1914.

14. Order *pro confesso*—Jan. 19, 1914.

Dated April 7th, 1914.

JOHN E. BENNETT,  
JESSE OLNEY,  
Solicitors for Complainant.

[Endorsed]: Filed Apr. 7, 1914. W. B. Maling,  
Clerk. By J. A. Schaertzer, Deputy Clerk. [90]

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[Certificate of Clerk U. S. District Court to  
Transcript of Record on Appeal.]

*In the District Court of the United States, in and  
for the Northern District of California, Second  
Division.*

No. 45—IN EQUITY.

ANDREW CLAUSS,

Plaintiff,

vs.

PALMER UNION OIL COMPANY, a Corporation,  
et als.,

Defendants.

I, Walter B. Maling, Clerk of the District Court of the United States in and for the Northern District of California, do hereby certify the foregoing ninety (90) pages, numbered from 1 to 90, inclusive, to be a full, true and correct copy of the Amended Bill of Complaint; Subpoena ad Respondendum; Motion of Palmer Union Oil Company to Dismiss Amended Bill of Complaint; Motion of George I.

Stewart and Gavin McNab to Dismiss Amended Bill of Complaint; Motion of Anglo-California Trust Company to Dismiss Amended Bill of Complaint; Motion of Frank L. Brown, Lewis A. Hilborn, George L. Walker, Charles E. Ladd and H. C. Stratton to Dismiss Amended Bill of Complaint; Motion of J. C. Kemp Van Ee to Dismiss Amended Bill of Complaint; Order *Pro Confesso*; Notice of Motion for an Order Vacating Decree *Pro Confesso*; Notice of Motion for an Order Vacating Decree *Pro Confesso*; Affidavit of Gavin McNab; Order Granting Motion to Vacate Order Taking Amended Bill *Pro Confesso*; Opinion on Motion to Dismiss Amended Bill of Complaint; Order Dismissing Suit; Decree Dismissing Amended Bill of Complaint; Motion to Amend the Order of this Court dated and entered March 2d, 1914, and to vacate and set aside the decree heretofore entered in this cause of date March 4th, 1914, and for an order granting leave to plaintiff to amend his amended bill of complaint; Opinion and Order Denying a Motion for Leave to File an amended Bill of Complaint; [91] Order Denying Motion to Amend Order of March 2, 1914; Petition for Allowance of Appeal; Assignment of Errors; Order Allowing Appeal; Bond on Appeal; to be included in Transcript on Appeal filed with this Praecipe, and that the same constitute the record on appeal to the United States Circuit Court of Appeals, for the Ninth Circuit, as requested in said praecipe.

I further certify that the cost of the foregoing transcript of record on appeal is \$50.00, that said

amount was paid by Jesse Olney, Esq., attorney for appellant, and that the original citation issued in said cause is hereto annexed.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of said District Court, this 28th day of May, A. D. 1914.

[Seal]                      WALTER B. MALING,  
Clerk of United States District Court, Northern  
District of California. [92]

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[Citation on Appeal (Original).]

UNITED STATES OF AMERICA,—ss.

The President of the United States to Palmer Union Oil Company, a Corporation, Frank L. Brown, Lewis A. Hilborn, George L. Walker, Charles E. Ladd, Gavin McNab, H. C. Stratton and George I. Stewart, as Directors of Said Palmer Union Oil Company, and in Their Individual Capacities, Frank L. Brown, J. C. Kemp Van Ee, Lewis A. Hilborn, H. C. Stratton, and Charles E. Ladd, as Directors, of Palmer Oil Company, a Corporation, and in Their Respective and Individual Capacities, Anglo-California Trust Company, a Corporation, Palmer Oil Company, a Corporation, Greeting:

You are hereby cited and admonished to be and appear at a United States Circuit Court of Appeals, for the Ninth Circuit, to be holden at the city of San Francisco, in the State of California, on the 9th day of May, 1914, being within thirty days from the date hereof, pursuant to an Order Allowing Appeal



filed in the clerk's office of the District Court of the United States, for the Northern District of California, wherein Andrew Clauss, Victor Enginger, W. A. Grubb, Joseph Hamm, K. Halter, L. Schott, L. Lait, E. W. Clark, Jean A. Gourselle, M. C. Brooke, H. L. Brooke, Jesse W. Olney, Lilly M. Stewart, Theodore B. Wilcox, F. L. Shull, and Alvin J. Whitman are appellants, and you are appellees, to show cause, if any there be, why the Orders and Decree rendered against the said appellants, as in the said Order Allowing Appeal mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

WITNESS, the Honorable MAURICE T. DOOLING, United States District Judge for the Northern District of California, this 9th day of April, A. D. 1914.

M. T. DOOLING,  
United States District Judge.

Service of within Citation, by copy, admitted this 9th day of April, A. D. 1914.

GAVIN McNAB,  
R. P. HENSHALL,  
B. M. AIKINS,  
LUTHER ELKINS,  
R. R. MOODY,

Attorneys for Defendants.

[Endorsed]: No. 45—Eq. In the District Court of the United States for the Ninth Circuit, Northern District of California. Andrew Clauss vs. Palmer Union Oil Company, a corp., et al. Citation. Filed

April 14, 1914. Walter B. Maling, Clerk. By  
———, Deputy Clerk. [93]

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[Endorsed]: No. 2428. United States Circuit Court of Appeals for the Ninth Circuit. Andrew Clauss, Victor Enginger, W. A. Grubb, Joseph Hamm, K. Halter, L. Schott, L. Lait, E. W. Clark, Jean A. Gourselle, M. C. Brooke, H. L. Brooke, Jesse W. Olney, Lilly M. Stewart, Theodore B. Wilcox, F. L. Shull and Alvin J. Whitman, Appellants, vs. Palmer Oil Company, a Corporation, Frank L. Brown, Lewis A. Hilborn, George L. Walker, Charles E. Ladd, Gavin McNab, H. C. Stratton and George I. Stewart, as Directors of Said Palmer Union Oil Company, and in Their Individual Capacities, Frank L. Brown, J. C. Kemp Van Ee, Lewis A. Hilborn, H. C. Stratton, and Charles E. Ladd, as Directors of Palmer Oil Company, a Corporation, and in Their Respective and Individual Capacities, Anglo-California Trust Company, a Corporation, and Palmer Oil Company, a Corporation, Appellees. Transcript of Record. Upon Appeal from the United States District Court for the Northern District of California, Second Division.

Received and filed May 28, 1914.

F. D. MONCKTON,

Clerk of the United States Circuit Court of Appeals  
for the Ninth Circuit.

By Meredith Sawyer,  
Deputy Clerk.

*In the United States Circuit Court of Appeals for  
the Ninth Circuit.*

ANDREW CLAUSS et al.,

Appellants,

vs.

PALMER UNION OIL COMPANY, a Corporation,  
et al.,

Appellees.

**Order Enlarging Time [to June 8, 1914, to File  
Record on Appeal, etc.].**

Good cause appearing, it is hereby ordered that the appellants may have until the 8th day of June, 1914, within which to file the record of its appeal and docket the case, and the appellant's time is hereby enlarged to that extent.

Dated May 9, 1914.

M. T. DOOLING,  
Judge.

[Endorsed]: No. 2428. United States Circuit Court of Appeals for the Ninth Circuit. Order Under Rule 16 Enlarging Time to June 8, 1914, to File Record Thereof and to Docket Case. Filed May 9, 1914. F. D. Monckton, Clerk. Re-filed May 28, 1914. F. D. Monckton, Clerk.



